

acknowledges that the Financial Foundations Course and Financial Accounting for Operations products were implemented as part of engagements with General Electric Corp., and that the Business Decision Making product was implemented as part of an engagement with Pratt & Whitney Corp. (*See* Ex. A of the protest, Affidavit of Michael R. Smialek, paragraphs 5, 10 and 14). The Assignee did not deliver the Financial Foundations Course, Financial Accounting for Operations and Business Decision Making products to any other companies.

Applicant did not prepare or deliver documentation to General Electric Corp. and Pratt & Whitney Corp. that describes the detailed operation of the Financial Foundations Course, Financial Accounting for Operations and Business Decision Making products. Applicant reviewed its records in order to find documents to respond to the Requirement for Information and was only able to locate internal undisclosed working documents and documents broadly describing the products at a high level.

However, Applicant was able to obtain copies of the Financial Foundations Course, Financial Accounting for Operations and Business Decision Making products. All three products were designed as stand-alone products and to be used by users without documentation. During the telephone interview of 8/15/01 between Examiner Ingberg and Charles Miller, the Applicant's attorney agreed to bring the products to the Patent Office so that the Examiner could view and examine the actual products. As was discussed during the interview, the Examiner and Applicant's attorney will schedule a personal interview at a later date. The Applicant intends on contacting other Examiners assigned to related cases and demonstrating the products to each Examiner interested in viewing the products. The Applicant believes that after examining the Financial

Foundations Course, Financial Accounting for Operations and Business Decision Making products, the Examiner will agree that the pending claims are patentable.

For example, several references that describe prior goal-based learning and simulation systems developed by the Assignee have already been considered by the Patent Office. In particular, the following references were cited on the Information Disclosure Statements filed June 14, 1999 and July 19, 1999:

Allan Collins; *Goal-Based Scenarios and the Problem of Situated Learning: A Commentary on Andersen Consulting's Design of Goal-Based Scenarios*, Educational Technology, November-December 1994.

Alan Nowakowski, *Reengineering Education at Andersen Consulting*, Educational Technology, November-December 1994.

Joel Montgomery, et al., *Conducting and Supporting a Goal-Based Scenario Learning Environment*, Educational Technology, November-December 1994.

Roger Schank, *Engines for Education*: URL:
http://www.ils.nwu.edu/~e_for_e/nodes/I-M-INTRO-ZOOMER-pg.html.

Furthermore, it appears that Mr. Smialek is not aware of any documents describing the Financial Foundations Course, Financial Accounting for Operations and Business Decision Making products. The protest Mr. Smialek filed includes 12 exhibits containing numerous allegations and none of the exhibits is a prior-art reference or identifies a prior-art patent or printed publication.

The Requirement for Information also seeks the date of first sale and first use of the "products" for which documentation is being submitted. The Financial Foundations Course, Financial Accounting for Operations and Business Decision Making products had long development and deployment cycles and, as a result, it is difficult to determine exactly a date of first use and first sale for each of the products or portions of the products. Furthermore, Applicant was aware of the Financial Foundations Course, Financial Accounting for Operations and Business Decision Making products at the time of drafting the present application and the related applications and respectfully submits that any use or sale of the products does not adversely affect the patentability of the pending claims and claims in the related patents. Accordingly, Applicant has not determined an exact date of first sale or first use for each of the products. However, in order to expedite the prosecution of the present application and related applications, the Examiner may initially assume that a first sale or first use of the products occurred more than 1 year prior to the filing of the present application. Applicant expressly reserves the right to submit evidence to show that any disclosures that are associated with the Financial Foundations Course, Financial Accounting for Operations and Business Decision Making products occurred at a later date.

Response to the Office Action

1. The Office Action indicates that claims 1-19 are allowable. Consequently, the patentability of these claims over the prior art is not discussed herein.
2. The Office Action objected to the declaration because Michael R. Smialek is listed as an author of the computer program claimed and shown in the specification, but is

not named as an inventor. Assignee traverses the objection and respectfully requests reconsideration.

The issue of whether or not Mr. Smialek is an inventor was discussed during the telephone interview of 8/15/01 between Examiner Ingberg and Charles Miller. During the interview, the Examiner expressed his concern that the listing of Mr. Smialek as an author of the computer program suggests that Mr. Smialek aided in the reduction of the invention to practice, which may be relevant to inventorship.

Inventorship is determined by analyzing the facts pertaining to conception of the invention. *See Burroughs Wellcome Co. v. Barr Lab., Inc.*, 32 USPQ2d 1915, 1919 (Fed. Cir. 1994) ("Conception is the touchstone of inventorship"); *see also Sewall v. Walters*, 30 USPQ2d 1356, 1358 (Fed. Cir. 1994) ("Determining 'inventorship' is nothing more than determining who conceived the subject matter at issue"). Here, there is no evidence in the record to suggest that Mr. Smialek contributed to the conception of any claim in the present application or any claim in any of the related patents or applications. As discussed below, after a thorough investigation, Applicant concluded that Mr. Smialek had not contributed to the conception of any of the pending claims and it would be improper to include Mr. Smialek as an inventor.

The issue of whether one who merely reduces an invention to practice is an inventor was addressed by the U.S. Court of Appeals for the Federal Circuit in *Sewall v. Walters*, 30 USPQ2d 1356 (Fed. Cir. 1994). The Court affirmed a decision by the Board of Patent Appeals and Interferences (Board) in which the Board found that "there was no evidence of record indicating that more than ordinary skill would have been needed to reduce to practice" the inventor's proposed apparatus. *Sewall* at 1358. The Board found

that the improvement over a previous patent "was fully capable of being implemented by a programmer of ordinary skill in the art by programming a general purpose computer to perform the required mathematical functions or by a hardware designer . . ." and that the alleged inventor who performed these tasks was not an inventor. *Sewall* at 1358. The Court held that the alleged joint inventor failed to persuade the Court that the Board clearly erred in finding that the alleged joint inventor's contribution was merely the exercise of ordinary skill that did not involve any inventive acts. *Sewall* at 1358.

Furthermore, even if Mr. Smialek is the author of the computer code listed on pages 133 through 163 of the present specification, authorship and inventorship are distinct concepts, and the authorship of the program does not in itself make Mr. Smialek an inventor. There is no specific evidence in the record to suggest that that Mr. Smialek contributed to the conception of any subject matter in any claim. Even the Affidavit filed by Mr. Smialek (Ex. A of the protest) fails to provide any specific information indicating that he contributed to the conception of any subject matter in any claim. Because of the absence of any specific evidence suggesting that Mr. Smialek contributed to the conception of any subject matter in any claim, Applicant requests reconsideration of objection to the declaration.

Response to the Protest

Applicant notes that Mr. Smialek made assertions regarding his alleged authorship of various materials given to the attorney responsible for preparation of the instant application. Assuming *arguendo* that such materials were used by the preparing attorney or were even bodily incorporated into the instant application, as indicated above,

Mr. Smialek did not present any specific information indicating that he contributed to the conception of any subject matter in any claim. It is also worthy to note that statements attributed to former and current employees of the Assignee (*see* Ex. A of the protest, Affidavit of Michael R. Smialek, ¶ 20(d), attributing statements regarding Mr. Smialek's status as an inventor to Eric Lannert, and para. 20(e) and 21, attributing statements to William Stoddard) are not supported by affidavits or otherwise from the alleged declarants, and therefore cannot be accorded significance.

Further still, the affidavits of Michael R. Smialek and Michael H. Rubin fail to state that Mr. Smialek started a company, Knowledge Dynamics, shortly after he left the employ of the Assignee. The various exhibits submitted by Mr. Smialek illustrate that he had knowledge of the instant application before and after the filing date (December 22, 1998) thereof (*see* Ex. A of the protest, Affidavit of Michael R. Smialek, ¶¶ 20(e), 22). However, it was not until after counsel for the Assignee approached Mr. Smialek's company, Knowledge Dynamics, (*see* Ex. F of the protest, Letter from L. Keith Stephens to Michael Smialek dated 12/16/99) that this protest was filed. Moreover, the Affidavit of Michael H. Rubin fails to note that Mr. Rubin is currently the Chief Technology Officer for Knowledge Dynamics. Attached hereto is a copy of a web page from Knowledge Dynamic's web site listing Messers. Smialek and Rubin as part of the management team for that company. (*See* Ex. 1, printout of the web page at <http://www.knowledgedynamics.com/about.html> on July 17, 2001).

In his protest, Mr. Smialek attempts to establish that the failure to name him as an inventor was a "misrepresentation." This misrepresentation is allegedly manifest because

the attorney responsible for drafting the instant application supposedly had knowledge of Mr. Smialek's alleged status as an inventor.

Based on the information currently known, Applicant does not believe that Mr. Smialek was a co-inventor of any claim in the present application or any claim in any of the related applications. And, in the event that Mr. Smialek should have been named as inventor, Applicant submits that the omission of Mr. Smialek as an inventor was not intentional. Indeed, if the Assignee is presented with evidence that Mr. Smialek should be named as an inventor, Applicant will file a petition to correct inventorship in accordance with 37 C.F.R. § 1.48(a). Under Rule 48, such correction can be made if the error in naming the correct inventor was made without "deceptive intent on the part of the person named as an inventor in error or of the person who through error was not named as an inventor."

There is no evidence of deceptive intent in this case. Indeed, there could not have been any deceptive intent. Applicant as well as Mr. Smialek had employment contracts with Assignee. These employment contracts required assignment of any patent rights to Assignee. Since Mr. Smialek was under an obligation to assign his patent rights to the Assignee, it was irrelevant to the Assignee whether Mr. Smialek was named as an inventor. Furthermore, the Assignee contacted Mr. Smialek and offered to take the necessary steps to name Mr. Smialek as an inventor if Mr. Smialek would identify the claims in any of the related patents and patent applications that he believes that he conceived of while an employee of the Assignee. Mr. Smialek has failed to specifically identify any claim that he believes that he conceived of while an employee of the Assignee and has refused to sign any form of agreement or assignment. The

investigation of inventorship that the Assignee was forced to conduct without any cooperation from Mr. Smialek revealed that Mr. Smialek is not an inventor of any of the pending claims or any of the claims in the related patents.

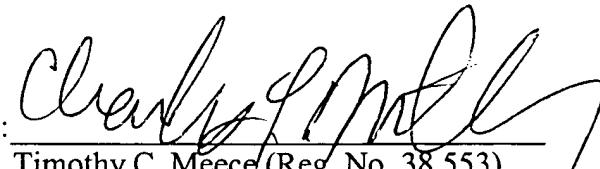
Finally, Mr. Smialek makes broad assertions throughout his protest that the work done as a precursor to the present invention was publicly disclosed or on-sale more than one year prior to the filing date of the instant application. Mr. Smialek has not shown that any pending claim in the present application or any of the related applications reads on any of the alleged public disclosure or on-sale activities. Furthermore, Mr. Smialek has also failed to show why any of alleged disclosure or on-sale activity is any more relevant than the references already considered by the Examiner.

The Examiner is invited to contact the undersigned at the telephone number listed below in the event that the Examiner has any questions regarding Applicant's response.

Respectfully submitted,

BANNER & WITCOFF, LTD.

By:


Timothy C. Meece (Reg. No. 38,553)

Charles L. Miller (Reg. No. 43,805)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

GROUP ART UNIT 2763

In re Patent Application

Serial No. 09 / 219, 478

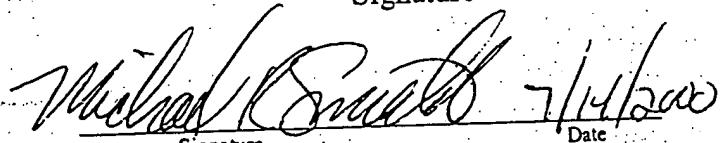
Filed: December 22, 1998

Examiner: Michael Pender

I, MICHAEL SMIALEK, hereby certify that this correspondence is being deposited with the US Postal Service as express mail with mailing label number:

EK 05580501845
in an envelope addressed to Assistant Commissioner for Patents,
Washington, D.C. 20231, on the date of my signature.

Signature



Michael Pender 7/14/2000

Signature

Date

PROTEST UNDER 37 CFR 1.291

Assistant Commissioner for Patents
Washington, D.C. 20231
Attn: Director of Examining Group 3107

Sir:

The undersigned hereby protests against the allowance of the above-identified patent application in light of the facts that the invention was in commercial use by the applicant for more than 1 year before the filing date, and inventorship of the patent may be fraudulently misrepresented.

As required under 37 CFR 1.291, the undersigned certifies that a copy of this correspondence, including all accompanying documents, is being deposited with the US Postal Service as first class mail in an envelope addressed to:

L. Keith Stephens
PO Box 52037
Palo Alto, CA 94303-0746

Mr. Stephens is listed by the Patent Office as applicant's attorney or agent in the file wrappers of related applications.

Summary of Submitted Exhibits

- A. Affidavit of Michael Smialek.
- B. Affidavit of Michael Rubin.
- C. Employee Performance Review from Andersen Consulting, documenting the performance and contributions of Michael Smialek as an employee of Andersen Consulting for the employment period 7/15/1995 – 11/30/1995.
- D. Employee Performance Review from Andersen Consulting, documenting the performance and contributions of Michael Smialek as an employee of Andersen Consulting for the employment period 12/1/1995 – 8/31/1996.
- E. Management Contribution Summary from Andersen Consulting, documenting the contribution of Michael Smialek to Andersen Consulting programs and initiatives for the employment period September 1995 – August 1996.
- F. Letter from L. Keith Stephens to Michael Smialek dated 12/16/1999.
- G. Letter from Michael Smialek to L. Keith Stephens, and others dated 2/9/2000.
- H. Fax from Robert Beiser to Michael Smialek of a letter from Kevin Rhodes to Robert Beiser dated 2/25/2000.
- I. Letter from Michael Smialek to Examiner Michael Pender dated 6/15/2000.
- J. Time Report from Andersen Consulting, documenting activities of Michael Smialek for the reporting period 2/16/1997 – 2/28/1997
- K. Printout of a web page from Andersen Consulting's web site excerpting their FY 1997 annual report.
- L. Contact information for current and former Andersen Consulting employees with first hand knowledge of material facts.

Concise Explanation of the Relevance of Submitted Exhibits

A. Affidavit of Michael Smialek.

Statements of fact from Michael Smialek, a former Andersen Consulting employee, regarding the inventorship and first commercial use of the subject matter of the patent application in question.

Exhibit A substantiates commercial use of all the subject matter disclosed in the specification of said application more than one year before the filing date. Such commercial uses make the subject matter ineligible for patent therefore no claims claiming the subject matter would be valid. Exhibit A also substantiates probable misrepresentation of inventorship. It further substantiates that if such misrepresentation exists it is likely deliberate, therefore invalidating the application.

Exhibit A refers to several current Andersen Consulting employees: William Stoddard, David Smith, Janet Simons, and John Hubbell. It is requested that the Examiner direct specific questions to these individuals as well as those named as inventors on the application in question. The Examiner can get contact information for these individuals by calling any of the following phone numbers: 800-777-0009, 847-714-6800, 630-377-3100.

B. Affidavit of Michael Rubin.

Statements of fact from Michael Rubin, a former Andersen Consulting employee, regarding the inventorship of the subject matter of the patent application in question. Exhibit B substantiates probable misrepresentation of inventorship. It further substantiates that if such misrepresentation exists it is likely deliberate, therefore invalidating the application.

C. Employee Performance Review from Andersen Consulting, documenting the performance and contributions of Michael Smialek as an employee of Andersen Consulting for the employment period 7/15/1995 – 11/30/1995.

This employee performance review covers part of Michael Smialek's participation on an Andersen Consulting client engagement for General Electric corp. called the GE FFC project. The review was created by Suzanne Pink, Michael Smialek's supervising manager during the period. It was approved by Janet Simons, currently a Partner at Andersen Consulting. Janet Simons was the most senior Andersen Consulting employee with daily involvement on the GE FFC engagement.

Exhibit C demonstrates that Michael Smialek was the primary inventor of the "rules based expert system" known internally at Andersen Consulting as the Tutor. This exhibit also demonstrates that the Tutor was used commercially, on a for fee client engagement, more than one year before the filing date of the application in question. Some of the relevant areas of the exhibit have been highlighted.

D. Employee Performance Review from Andersen Consulting, documenting the performance and contributions of Michael Smialek as an employee of Andersen Consulting for the employment period 12/1/1995 – 8/31/1996.

This employee performance review covers part of Michael Smialek's activities from 12/1/1995 through 8/31/1996. During the period of December 1995 through May 1996, Michael Smialek was involved full-time on the GE FFC project mentioned above. From May 1996 through August 1996, Michael Smialek led an effort to enhance, document, and package Andersen Consulting's business simulation technologies for reuse on other client engagements.

The review was created by Suzanne Pink, Michael Smialek's supervising manager during the period. It was approved by David Smith the project manager of the GE FFC engagement.

Exhibit D demonstrates that Michael Smialek was the primary inventor of the "rules based expert system" known internally at Andersen Consulting as the Tutor. It also demonstrates that Michael Smialek was the primary inventor of the workbenches and testing facilities known internally at Andersen Consulting as the Tutor Workbench and Regression Test Bench, respectively. The exhibit further demonstrates that the Tutor

was used commercially, on a for fee client engagement, more than one year before the filing date of the application in question.

Near the top of page 9 of Exhibit D, the review says "Mike Created a very complex document for describing the tutor and how it functions." This refers to one of the several documents authored or co-authored by Michael Smialek that make up substantial portions of the specification in the patent application. Michael Smialek's name was prominently displayed on these documents, substantiating that the applying attorney had knowledge of Michael Smialek's inventorship.

Near the top of page 10, Exhibit D says "Also, Mike independently developed a presentation describing how several existing tools could be integrated to improve Andersen's solution delivery capability, and increase its market share in the knowledge worker market." This refers to a presentation known internally at Andersen Consulting as "Knowledge Worker Tools" authored solely by Michael Smialek. Excerpts from this presentation are used extensively in the specification of the patent application. Michael Smialek's name was prominently displayed on this document.

At the top of page 16, Exhibit D states that Michael Smialek was the primary contributor of the Tutor. It goes on to mention the "second semester of the FMP program". This refers to a second client engagement for General Electric Corp. called FAO. It was on this project that the "spreadsheet object component", known internally at Andersen Consulting as the Simulation Engine was first used commercially in October 1996. Michael Smialek conceived of and contributed the conceptual design of the simulation engine. Benoit Bertrand contributed the detailed design of the simulation engine and reduced it to practice on the FAO engagement. Some of the relevant areas of the exhibit have been highlighted.

E. Management Contribution Summary from Andersen Consulting, documenting the contribution of Michael Smialek to Andersen Consulting programs and initiatives for the employment period September 1995 – August 1996.

This management contribution summary documents Michael Smialek's contributions to the Tutor, Simulation Engine, editing and testing workbenches, Profiling technology, and Knowledge Worker Tools. It also substantiates the commercial usage of that subject matter in conjunction with Andersen Consulting client engagements.

F.

Letter from L. Keith Stephens to Michael Smialek dated 12/2/1999.

This letter was sent shortly after the issuance of related patent 5987443. This letter is addressed to Michael Smialek, however it starts "Dear Mr. Mitchell:". A similar letter was sent to at least one other former Andersen Consulting employee named Scott Mitchell. The error seems to be the result of a botched copy/paste operation.

The letter states "We are familiar with Knowledge Dynamics products." even though L. Keith Stephens has never reviewed any Knowledge Dynamics products. It substantiates that L. Keith Stephens was well aware of Michael Smialek, his contributions to the subject matter, and his contact information. It is therefore suggested that omission of Michael Smialek from the inventorship would be fraudulent.

G.

Letter from Michael Smialek to L. Keith Stephens, and others dated 2/9/2000.

This letter was sent to L. Keith Stephens to clarify the inventorship and statutory bar defects in the related patents that had issued as of 2/9/2000. It was copied to two other Andersen Consulting attorneys: Vicki St. John and Kevin Rhodes. It was also copied to Michael Smialek's attorney, Robert Beiser. It substantiates that Andersen Consulting's legal representatives have full knowledge of the inventorship and statutory bar issues and have had sufficient time to exercise their duty to disclose such information to the PTO.

H.

Fax from Robert Beiser to Michael Smialek of a letter from Kevin Rhodes to Robert Beiser dated 2/25/2000.

This was the only Andersen Consulting response to the 2/9/200 letter of Exhibit G. It was sent from Kevin Rhodes to Robert Beiser. Robert Beiser faxed it to Michael Smialek. It substantiates that Andersen Consulting's legal representatives have full knowledge of the inventorship and statutory bar issues and have had sufficient time to exercise their duty to disclose such information to the PTO.

I. Letter from Michael Smialek to Examiner Michael Pender dated 6/15/2000.

Exhibit I was sent to Examiner Pender to disclose facts related to inventorship and first commercial use.

J. Time Report from Andersen Consulting, documenting activities of Michael Smialek for the reporting period 2/16/1997 – 2/28/1997.

Exhibit J is a time report from Andersen Consulting. It shows the date that Michael Smialek demonstrated subject matter in question to employees of Allstate Insurance Co. The exhibit substantiates a commercial use of subject matter of the omnibus specification more than one year before the filing date.

K. Printout of a web page from Andersen Consulting's web site excerpting their FY 1997 annual report.

Andersen Consulting's fiscal year runs from September through August. In Exhibit K, the annual report from 1997 speaks of the Pratt & Whitney BDM business simulation in the past tense, demonstrating that Andersen Consulting's business simulation inventions were in commercial use more than one year before the filing date.

L. Contact information for current and former Andersen Consulting employees with first hand knowledge of material facts.

Contact information for people who can confirm relevant facts.

Conclusion

~~The submitted exhibits substantiate that all the subject matter of the omnibus specification was in commercial use for well over a year before the filing date of the application~~

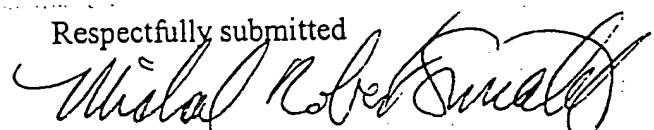
and are therefore ineligible for patent. It further substantiates that Michael Smialek is likely the actual primary inventor or a contributing inventor. Accordingly, it is respectfully submitted that all of the claims of the pending application should be rejected. It is suggested that the Examiner verify these assertions by investigating beyond the statements of any agent of Andersen Consulting. It is suggested that the Examiner seek comment directly from individuals with first hand knowledge of the facts, specifically, the inventors named in application 09/219,478, as well as current Andersen Consulting executives named herein.

If the Examiner determines that the subject matter is still eligible for patent in spite of the evidence presented here, it is submitted that Michael Smialek should be named as an inventor.

This protest was prepared in haste in order that it be received by the Examiner prior to issuance of notice of allowance of application 09/219,478. Undersigned notifies Examiner that more evidence may be forthcoming as it becomes available, and requests that Examiner accept said evidence and amend it hereto.

The undersigned is available for further consultation by the Examiner.

Respectfully submitted



Michael Robert Smialek

Michael R. Smialek
1548 Meadow Lane
Glenview, IL 60025
847-869-1595
847-486-0501

In re Patent Application

Serial No. 09/219,478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291



Exhibit A

Affidavit of Michael Smialek.

Affidavit of Michael Robert Smialek

THIS INSTRUMENT HEREBY ACKNOWLEDGES that the undersigned, Michael Robert Smialek, residing at 1548 Meadow Lane, Glenview, IL 60025, is of legal age, and does hereby swear and affirm that the following is true and accurate, to the best of his knowledge and recollection, under penalty of perjury:

1. I was employed at Andersen Consulting from August of 1992 through August of 1998.
2. From July 1995 through August 1998, I was deeply involved in Andersen Consulting's Business Simulation Practice.
3. From July 1995 through May of 1996, I conceived, designed, and developed the rules based expert system known internally at Andersen Consulting as the Tutor.
4. In the claims of the eighteen issued patents related to application 09/219/478, the Tutor is referred to as the "rules based expert system".
5. The "rules based expert system" known internally at Andersen Consulting as the Tutor, had been reduced to practice, was ready for patenting and was in commercial use on an Andersen Consulting engagement for General Electric Corp. in February of 1996. This engagement was called Financial Foundations Course.
6. The key Andersen Consulting executive contacts for the FFC project were William Stoddard, a Partner; Janet Simons, then an Associate Partner, now a Partner; David Smith, then a Manager, now an Associate Partner, Suzanne Pink, formerly a Manager, and Martha O'Connor, formerly a Manager.
7. The key General Electric contacts and sponsors for the FFC project were Nancy Taylor, Neil Flannagan, Eileen Whelly, Steve Kerr, and Dennis Dammermann.
8. In April 1996 I conceived of and conceptually designed the spreadsheet object component known internally at Andersen Consulting as the Simulation Engine.
9. In the claims of the eighteen issued patents related to application 09/219/478, the Simulation Engine is referred to as the "spreadsheet object component".
10. The "spreadsheet object component", known internally at Andersen Consulting as the Simulation Engine, had been reduced to practice, was ready for patenting and was in commercial use on an Andersen Consulting engagement for General Electric Corp. in October of 1996. This engagement was called Financial Accounting for Operations.
11. The "rules based expert system and spreadsheet object component" were used together commercially, in the context of Business Simulation, on the FAO engagement for General Electric Corp. in October of 1996.
12. Except for Suzanne Pink the key Andersen Consulting contacts for the FFC engagement were the same as for the FAO engagement.
13. The key GE contact for the FAO engagement was Paul Beucker (or Beuker?).
14. The "rules based expert system and spreadsheet object component" were demonstrated, offered for sale, and used commercially on an Andersen Consulting engagement for Pratt & Whitney Corp. The sales activities for this project began prior to April of 1997. The project development

began approximately in May of 1997 and ended some time in 1998. This engagement was called Business Decision Making.

15. I performed a presentation and demonstration of Andersen Consulting's business simulation capability for a group of Allstate Insurance, Co. employees on February 20, 1997. I demonstrated the completed GE FFC Business Simulation application, as well as the Tutor and Simulation Engine and their related workbenches. I was directed to deliver this presentation and demonstration by my then manager, Suzanne Pink. The presentation and demonstration took place on Allstate premises in an open area of the cafeteria around lunchtime. It was scheduled and announced several weeks in advance. It was attended by executives and employees.
16. In the eighteen issued patents related to application 09/219/478, the specifications are identical or nearly identical. I believe this is called an omnibus specification. I assume that application 09/219/478 makes use of the same omnibus specification.
17. All of the subject matter in the specification was in commercial use more than one year before the application date of December 22, 1998.
18. Significant parts of the omnibus specification, including text, screen shots, flow charts, and source code samples, were taken from documents that I authored or co-authored between September 1995 and September 1997.
19. I do not know the inventorship for patent application 09/219/478. If the application in any way claims a "rules based expert system with a spreadsheet object component" and I am not listed as an inventor, then the inventorship is incorrect.
20. If the inventorship on patent application 09/219/478 is incorrect, I believe it is incorrect due to a deliberate misrepresentation on the parts of Andersen Consulting and the applying attorney, L. Keith Stephens. I have arrived at the belief that the misrepresentation of inventorship is deliberate because:
 - a. It is well known at Andersen Consulting that I invented the "rules based expert system" and contributed to the invention of the "spreadsheet object component". It is well known at Andersen Consulting that I invented or contributed to the invention of many other Andersen Consulting business simulation tools, technologies, and methods.
 - b. In the omnibus specification I recognize text, screen shots, flow charts, source code, and slides as having been taken from materials I authored during my employment at Andersen Consulting. I have been told by current and former Andersen Consulting employees that L. Keith Stephens drafted the omnibus specification based on said materials and others. My name was displayed prominently on said materials when I authored them. I have been told by current and former Andersen Consulting employees that my name was intact and still prominently displayed when said materials were delivered to L. Keith Stephens.
 - c. My name appears in the eighteen issued patents in a source code sample that is part of the omnibus specification.
 - d. Eric Lannert is a former Andersen Consulting employee and a named inventor on related patents that use the omnibus specification (patents 6073127, 6029159, 6029156, 6026386). Eric Lannert verbally stated to me that during interviews with L. Keith Stephens prior to the filing of the patents, he stated to L. Keith Stephens that I (Michael Smialek) was a contributing inventor and should be named as such in the patents.

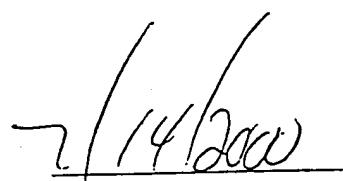
filing of the patents, he stated to L. Keith Stephens that I (Michael Smialek) was a contributing inventor and should be named as such in the patents.

- e. William Stoddard initiated the patent application activities. On several occasions prior to and subsequent to the filing date, I explained the rules regarding the statutory bar, accuracy of inventorship, and duty of disclosure to William Stoddard. On each occasion his reply was to the effect that "our lawyers have found a way around those issues."
21. William Stoddard called me on 3/28/2000. I took careful notes during the conversation. When I confronted him with the inventorship and statutory bar issues, he conceded that the "Tutor is prior art" and the "Simulation Engine is prior art". He also stated "You weren't here, so you weren't named". I took this to mean that I didn't deserve to be named as an inventor because I was no longer employed at Andersen Consulting.
22. From September 1998 – November 1998 Andersen Consulting contracted with me to set up and deliver a 5-day training course to teach Andersen Consulting employees how to use the Tutor, the Simulation Engine, and several other tools and related workbenches. Andersen Consulting contracted with me to conduct two sessions of the course. This time frame was just before the filing date of the applications and there was much activity related to the patent applications. During this period I had face-to-face contact with several Andersen Consulting employees involved in the filing including Eric Lannert, John Hubbell and Brian Beams, among others. This contact occurred on Andersen Consulting premises. At this time I clearly and repeatedly explained the patent laws regarding accuracy of inventorship and statutory bar to Eric Lannert, John Hubbell and Brian Beams. At this time I had never heard of L. Keith Stephens. In several subsequent conversations with Eric Lannert, John Hubbell and Brian Beams, they told me that they conveyed the information regarding my contributions to the inventions and the commercial uses of the inventions to the attorneys involved in the applications.
23. I believe that direct questioning of named inventors of application 09/219/478 and the Andersen Consulting contacts from the FFC or FAO engagements will result in the conclusions that a) I am the primary or a contributing inventor to nearly all subject matter in the omnibus specification; and b) the subject matter of the omnibus specification is ineligible for patent due to commercial uses more than a year before the filing date.
24. I believe that the evidence presented in the protest of application 09/219/478 submitted by me on 7/14/2000 represents only a fraction of the available evidence that proves that the subject matter of the omnibus specification is ineligible for patent. I believe that much more evidence supporting ineligibility is available in internal Andersen Consulting documents and project records.

Signed this day:



Michael Robert Smialek



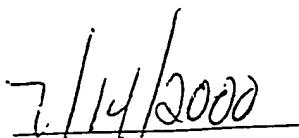
Date

- e. William Stoddard initiated the patent application activities. On several occasions prior to and subsequent to the filing date, I explained the rules regarding the statutory bar, accuracy of inventorship, and duty of disclosure to William Stoddard. On each occasion his reply was to the effect that "our lawyers have found a way around those issues."
21. William Stoddard called me on 3/28/2000. I took careful notes during the conversation. When I confronted him with the inventorship and statutory bar issues, he conceded that the "Tutor is prior art" and the "Simulation Engine is prior art". He also stated "You weren't here, so you weren't named". I took this to mean that I didn't deserve to be named as an inventor because I was no longer employed at Andersen Consulting.
22. From September 1998 – November 1998 Andersen Consulting contracted with me to set up and deliver a 5-day training course to teach Andersen Consulting employees how to use the Tutor, the Simulation Engine, and several other tools and related workbenches. Andersen Consulting contracted with me to conduct two sessions of the course. This time frame was just before the filing date of the applications and there was much activity related to the patent applications. During this period I had face-to-face contact with several Andersen Consulting employees involved in the filing including Eric Lannert, John Hubbell and Brian Beams, among others. This contact occurred on Andersen Consulting premises. At this time I clearly and repeatedly explained the patent laws regarding accuracy of inventorship and statutory bar to Eric Lannert, John Hubbell and Brian Beams. At this time I had never heard of L. Keith Stephens. In several subsequent conversations with Eric Lannert, John Hubbell and Brian Beams, they told me that they conveyed the information regarding my contributions to the inventions and the commercial uses of the inventions to the applying attorneys.
23. I believe that any direct questioning of named inventors of application 09/219/478 and the 24 related applications regarding inventorship and commercial uses will result in a conclusion that the subject matter of the omnibus specification is ineligible for patent. I believe that direct questioning of the Andersen Consulting contacts from the FFC or FAO engagements will result in a conclusion
24. I believe that the evidence presented in the protest of application 09/219/478 submitted by me on 7/14/2000 represents only a fraction of the available evidence that proves that the subject matter of the omnibus specification is ineligible for patent. I believe that much more evidence supporting ineligibility is available in internal Andersen Consulting documents and project records.

Signed this day:



Michael Robert Smialek



Date

In re Patent Application

Serial No. 09 / 219 , 478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291



Exhibit B

Affidavit of Michael Rubin.

Affidavit of Michael H. Rubin

THIS INSTRUMENT HEREBY ACKNOWLEDGES that the undersigned, Michael H. Rubin, residing at 916 Michigan St., Evanston, IL 60202, is of legal age, and does hereby swear and affirm that the following is true and accurate, to the best of his knowledge and recollection, under penalty of perjury:

I was employed at Andersen Consulting from July 1996 through September 1999. From March 1998 through September 1999 I was involved in Andersen Consulting's Business Simulation practice.

This affidavit is in respect to patent 09/219/478, which as of this writing is pending Notice of Allowance. Andersen Consulting submitted this application with 24 others using an omnibus specification in December of 1998. These patents refer to "a rules based expert system" which is known internally at Andersen Consulting as the "Tutor." I believe the inventorship on patent 09/219/478 may be incorrect.

During the summer of 1998, I personally sent several documents related to the Tutor and it's workbench referred to internally as "ETSICA" to L. Keith Stephens, an attorney hired by Andersen Consulting to patent inventions created by the Business Simulation practice. I sent this material to L. Keith Stephens as email attachments under the direction of John R. Hubbell, an Andersen Consulting manager, and Eric J. Lannert, a former Andersen Consulting employee.

In addition, Eric J. Lannert and Eric Blow, another Andersen Consulting employee, sent additional documents and source code to L. Keith Stephens via email as well as on CD-ROM.

The documents describing the Tutor were mostly written by Michael R. Smialek and Malcolm J. Youngren who had their names on these documents. The documents included HTML pages and detailed Microsoft Word documents describing the use of the Tutor and ETSICA. The Tutor and ETSICA were designed and developed mostly by Michael R. Smialek and had his name prominently displayed in the source code. Within the Andersen Consulting Business Simulation practice, Michael R. Smialek is widely known in the as the inventor of the Tutor, and ETSICA.

Although the claims are unknown to me, the omnibus specification used for patent 09/219/478, suggests that Michael R. Smialek should be listed as either the primary inventor or a contributing inventor.

Signed this day:



Michael H. Rubin

Michael H. Rubin

7/14/2000

Date

In re Patent Application

Serial No. 09/219,478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291



Exhibit C

Employee Performance Review from Andersen Consulting,
documenting the performance and contributions of Michael Smialek as
an employee of Andersen Consulting for the employment period
7/15/1995 – 11/30/1995.

ANDERSEN CONSULTING

CAREER MAP PERFORMANCE APPRAISAL

EVALUATEE

Name	Mike Smialek	Competency Group	Technology
Personnel Number	000814211	Skill Track	Technology Architecture
GMU/LMU	0283/080	Career Level	Consultant
Business Organization	Consulting	Industry/Market	Cross Industry

EVALUATOR

Name	Suzanne Pink	Career Level	Experienced Manager
Personnel Number	000681679	Industry/Market	Cross Industry
GMU/LMU	0283/080	Basis of Evaluation	Extensive
Competency Group	Technology		

EVALUATION

Project/Job Title	GE FMP FFC Design	Period Start	7/15/95
Client/Program Name	GE	Period End	11/30/95
Client Number	GEN042	Date Conducted	

APPROVAL

Name	Janet Simons	<input checked="" type="checkbox"/> Approved
Career Level	Associate Partner	
GMU/LMU	0021/062	

CAREER MAP PERFORMANCE APPRAISAL

Roles and Expectations

GE is replacing its instructor-led Financial Foundations Course (FFC) with a computer-based business simulation and presentation system.

Mike's role during the design phase of the project is to serve as the lead designer of the tutoring component of the application. This component will process student actions, determine appropriate feedback based on the type of error that occurred, and deliver that feedback.

Mike will supervise one staff person during this period, who will assist Mike in the development of tutor components and workbenches for application designers to input feedback data.

Mike is responsible for managing his own work effort, planning appropriate tasks and providing accurate status of his progress. He must work closely with instructional designers to obtain requirements, and also with the other system architects to ensure that the tutor conforms to other architecture standards.

At the end of this phase, Mike should deliver a working tutor component, which can be integrated into the overall architecture, and a workbench for designers to input feedback.

CAREER MAP PERFORMANCE APPRAISAL

REVISED 11/14

SKILL DOMAINS

Content Skill Domains

	<i>Standard</i>	<i>Assessed</i>
Application Programming	<p>3</p> <ul style="list-style-type: none"> * Develop complex program modules from general specifications. * Identify potential design discrepancies and recommend modifications to others' code. * Use architecture efficiently and effectively. * Provide programming assistance to others. * Apply principles of good code development (e.g., reusability, maintainability and self-testing). * Develop guidelines and standards in support of development practice. 	<p>3</p> <ul style="list-style-type: none"> * Develop complex program modules from general specifications. * Identify potential design discrepancies and recommend modifications to others' code. * Use architecture efficiently and effectively. * Provide programming assistance to others. * Apply principles of good code development (e.g., reusability, maintainability and self-testing). * Develop guidelines and standards in support of development practice.

Mike was given very general guidelines for the tutor component he designed, and was able to develop a very complex application. He is very helpful to others on the team, and is very committed to concepts of reusability and "self-documentation" in all his work.

Functional Design	<p>2</p> <ul style="list-style-type: none"> * Identify functional requirements for your area of responsibility. * Conduct and document user interviews. * Define simple, maintainable processes based on a functional architecture. * Identify functional interfaces and incorporate into design. * Define data requirements of a business process. * Use design tools effectively. * Document volume, frequency and response time requirements of business transactions. 	<p>3</p> <ul style="list-style-type: none"> * Define the business dialogue that the process should execute. * Design simple, maintainable processes based on a functional architecture. * Define complex processes based on a functional architecture. * Develop functional architecture that supports user requirements. * Identify deviations from functional requirements in design specifications. * Identify key design issues and recommend possible solutions. * Identify scope changes, assess and communicate potential impact. * Recommend modifications to business processes based on design considerations.
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CAREER MAP PERFORMANCE APPRAISAL

The architecture Mike designed for the tutor is based on a very complex design. He was able to quickly understand functional requirements, and modify the tutor design as functional requirements evolved through several iterations. He also was able to rapidly assess the impact of required modifications to the design as user requirements changed.

Performance Testing	3	
		<ul style="list-style-type: none">* Identify and describe testing concepts.* Define a test plan based on performance requirements.* Determine which areas of the application or technical environment should be performance tested.* Verify performance test results meet requirements and obtain user sign-off.* Determine appropriate solution to address the causes of testing discrepancies.* Analyze potential system performance problems and make appropriate recommendations.

Mike does a thorough job in testing the performance of his application, and systematically works to improve it where necessary. He understands how different approaches to a problem will impact performance, and always seeks to optimize it.

Project Management	2	
		<ul style="list-style-type: none">* Define tasks and create team workplans with moderate supervision.* Balance quality of work with deadlines and budget.* Delegate work to others and monitor progress.* Identify issues affecting work progress and recommend solutions.* Communicate schedule variances and potential scope changes in status reports.* Provide timely performance feedback.* Compare and contrast the capability and service offerings of the various Competency Groups.

CAREER MAP PERFORMANCE APPRAISAL

Mike manages his own work effort well, but must work on accurately reporting status to his managers. Mike has a tendency to say something is "complete", but the smaller sub-components may not actually be complete. When prompted, he can accurately estimate work efforts for these smaller components, but must work to better balance work effort with the ability to deliver on time/within budget.

Technical Design	3	4
	<ul style="list-style-type: none">* Identify system performance issues resulting from proposed functional design and recommend appropriate functional design changes.* Identify key technical design issues and recommend possible solutions.* Design interfaces between the system being developed and other systems with which it will communicate.* Comply with application architecture/technical architecture boundary standards.* Assess external system change requirements to accommodate interfaces, and create appropriate change requests.* Integrate technical design with overall technical architecture.	<ul style="list-style-type: none">* Define the sequence in which processing is performed and how data is passed between processes.* Determine data and process distribution in a way that balances functional simplicity with technical feasibility.* Develop conceptual technical designs that comply with the technical architecture.* Specify deliverables to be produced during technical design effort.* Estimate application's cost, resource consumption and response time.

Mike was given a very challenging task, for an application he was unfamiliar with, and was able to develop an architecture that successfully met all design requirements.

CAREER MAP PERFORMANCE APPRAISAL

Technology Architecture	2	<ul style="list-style-type: none"> * Combine architecture components to build one area of an architecture. * Identify how architecture components will be utilized by applications. 	4	<ul style="list-style-type: none"> * Determine appropriate boundaries for the components of an architecture. * Articulate the strengths and weaknesses associated with utilizing alternative architecture solutions. * Recommend a given architecture solution. * Define custom architecture requirements around a known architecture solution. * Define what architecture deliverables need to be produced. * Balance quality requirements against development and maintenance costs in resolving architecture issues. * Develop procedures for the on-going operational support of an architecture.
	<p>Mike has made significant contributions to our technical architecture, introducing new approaches and tools throughout the application to increase the sophistication of the overall product. He was able to evaluate a number of strategies for implementing the tutor component, and determined which approach would be ideal for our project. The final result was a product that will likely be reusable for similar engagements.</p>			

Technology Configuration and Deployment	2	<ul style="list-style-type: none"> * Perform initial system component configuration. * Execute the proper software and/or hardware migration procedures. * Ensure that the necessary user administration changes have been made. 	2	<ul style="list-style-type: none"> * Perform initial system component configuration. * Execute the proper software and/or hardware migration procedures. * Ensure that the necessary user administration changes have been made.

CAREER MAP PERFORMANCE APPRAISAL

Technology Specialization	2	<ul style="list-style-type: none"> * Implement specific technology components in area of specialization. * Utilize existing tools and environment to support tasks. * Articulate the strengths and weaknesses associated with a given technology solution within area of specialization. 	4
			<ul style="list-style-type: none"> * Recommend a given technology solution within area of specialization. * Determine an approach for providing technology solutions within area of specialization. * Articulate the strengths and weaknesses associated with utilizing alternative implementation environments for area of specialization. * Specify changes required to other technology components to optimize performance in area of specialization.

Mike's expertise in knowledge- and rule-based systems was essential to the development of the tutor component. Without this logic, our tutor would not have the level of reuse that it has, nor the ability to provide feedback according to a specific learning/feedback strategy in a consistent manner.

Other Content Skill Domains

No Basis Content Skill Domains

Account Planning	1
Business Process Acumen	1
Business Process Conversion	1
Facilitation	2
Functional/User Testing	2
Process Consulting	1
Quality Management	1
Research	1
Sales Planning and Implementation	1
Technology Operations Specialization	1

CAREER MAP PERFORMANCE APPRAISAL

Professional Qualities

	<i>Standard</i>	<i>Assessed</i>
Business Writing	2	2

Mike is able to develop effective presentations for a given audience. He must work on writing detailed technical documents, which sometimes become too technical for the intended audience. When time becomes critical, Mike has a tendency to let documentation fall to the bottom of the priority list.

Influence	2	2
	<ul style="list-style-type: none"> * Provide input that is considered in group or team decision making. * Secure cooperation from and/or persuade co-workers. * Impact team morale, sense of belonging and participation. * Viewed as credible, knowledgeable and sincere. * Demonstrate awareness of others' personal behavior style. 	<ul style="list-style-type: none"> * Provide input that is considered in group or team decision making. * Secure cooperation from and/or persuade co-workers. * Impact team morale, sense of belonging and participation. * Viewed as credible, knowledgeable and sincere. * Demonstrate awareness of others' personal behavior style.

Mike has a very persuasive style when participating in group discussions, and presents his arguments very accurately. This is generally good, but Mike must work on driving compromise solutions when appropriate. He is respected as one of the most technically knowledgeable team members, and his personality certainly contributes to increasing team morale.

Initiative	3	3
	<ul style="list-style-type: none"> * Set personal standards that go beyond the expectation of others. * Identify and act upon opportunities to increase quality of team output. * Look for opportunities to make a contribution outside of immediate role. * Model initiative for others on team. 	<ul style="list-style-type: none"> * Set personal standards that go beyond the expectation of others. * Identify and act upon opportunities to increase quality of team output. * Look for opportunities to make a contribution outside of immediate role. * Model initiative for others on team.

CAREER MAP PERFORMANCE APPRAISAL

Mike's initiative is outstanding - it is often difficult to get him to stop working! He is always looking for ways to contribute to the knowledge capital of the Firm.

Innovation	3	3
	<ul style="list-style-type: none">* Identify and use tools and techniques which can encourage innovative thinking.* Implement new approaches, methods, alternatives or solutions and identify potential impacts.* Develop new ways to solve problems when standard approaches do not apply.* Integrate or combine known approaches in novel ways to meet needs or objectives.	<ul style="list-style-type: none">* Identify and use tools and techniques which can encourage innovative thinking.* Implement new approaches, methods, alternatives or solutions and identify potential impacts.* Develop new ways to solve problems when standard approaches do not apply.* Integrate or combine known approaches in novel ways to meet needs or objectives.

The breadth of Mike's technical knowledge allows him to provide innovative solutions to several areas of the technical design. He developed a workbench to allow designers to enter knowledge directly into databases, thus leveraging programmer time during implementation.

Leadership	2	2
	<ul style="list-style-type: none">* Contribute to a positive work environment through own behaviour.* Build the trust and confidence of others at all levels.* Promote sharing of information.* Demonstrate commitment through actions.* Consider balance between others' work and personal priorities.	<ul style="list-style-type: none">* Contribute to a positive work environment through own behaviour.* Build the trust and confidence of others at all levels.* Promote sharing of information.* Demonstrate commitment through actions.* Consider balance between others' work and personal priorities.

Negotiation	2	2
	<ul style="list-style-type: none">* Resolve issues with subordinates.* Represent Andersen Consulting's viewpoint in issue resolution.* Identify situations requiring effective negotiation.	<ul style="list-style-type: none">* Resolve issues with subordinates.* Represent Andersen Consulting's viewpoint in issue resolution.* Identify situations requiring effective negotiation.

Mike must learn to seek out win-win solutions to issues, in discussions with others. This applies to both technical and administrative concerns.

CAREER MAP PERFORMANCE APPRAISAL

REVISION # 12

Oral Communication	3	* Organize discussion in a logical manner. * Express ideas to individuals and groups, both in formal and informal settings. * Communicate intended messages clearly when delivering formal presentations. * Develop messages that convey alternative viewpoints. * Respond to questions with accurate and complete answers. * Use effective non-verbal communication during formal presentations. * Communicate appropriately with people at various levels.	2 * Organize and present own perspective in a logical manner. * Express ideas clearly and concisely to groups in informal settings. * Adapt communication content based on audience level. * Listen actively and respond to others.
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In formal presentations, Mike is very comfortable presenting technical materials. He must learn to tailor his presentations to his audience, sometimes altering the path of the conversation depending on the interests of the individuals in the room. Mike also needs to know when to raise issues in group meetings, and when to hold his thoughts for private communication.

Personnel Development	2	* Pursue personal career development goals. * Balance career expectations and business needs. * Seek increased contribution and level of responsibility. * Provide informal feedback to others. * Seek out mentors for coaching and counselling.	2 * Pursue personal career development goals. * Balance career expectations and business needs. * Seek increased contribution and level of responsibility. * Provide informal feedback to others. * Seek out mentors for coaching and counselling.
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Mike is proactive in seeking mentoring advice, and continues to look forward at his own career development. Mike's interest in this project is a good example, as it broadens his exposure to the work being done by the Emerging Technologies Group.

CAREER MAP PERFORMANCE APPRAISAL

INVESTIGATOR: A

Problem Solving	2	<ul style="list-style-type: none"> * Break problems into distinct and manageable parts. * Develop supporting data and rationale for alternative solutions. * Refer to precedents in determining solution alternatives. * Recommend solution to problem from various alternatives. * Implement solutions within immediate scope. 	2	<ul style="list-style-type: none"> * Break problems into distinct and manageable parts. * Develop supporting data and rationale for alternative solutions. * Refer to precedents in determining solution alternatives. * Recommend solution to problem from various alternatives. * Implement solutions within immediate scope.
		<p>Mike has good problem solving skills, but must remember to consider project scope in developing solutions. He is always eager to develop the most robust solution, but must also consider other project constraints. Although the tutor component exceeded budget, its capabilities most likely resulted in an overall decrease in total development time.</p>		

Teamwork/Collaboration	2	<ul style="list-style-type: none"> * Encourage others to share ideas to develop team cohesion. * Listen, while withholding judgement, to all viewpoints. * Participate in goal setting and problem solving. * Identify barriers to effective teamwork. * Help other team members who need assistance. * Be open and flexible to new ideas that may alter team goals. * Share credit for accomplishments with team members. 	2	<ul style="list-style-type: none"> * Encourage others to share ideas to develop team cohesion. * Listen, while withholding judgement, to all viewpoints. * Participate in goal setting and problem solving. * Identify barriers to effective teamwork. * Help other team members who need assistance. * Be open and flexible to new ideas that may alter team goals. * Share credit for accomplishments with team members.
		<p>Mike listens well to different points of view, and works to develop the best solution for the team. However, during this design phase Mike worked fairly independently, without sufficient communication with other members of the architecture team. This led to some difficulty in integrating the tutor component with the rest of the architecture. Early, up-front discussions/solutions for the overall integration could have eliminated this difficulty.</p>		

No Basis Professional Qualities

Diversity Management

2

Professional Relationships

2

CAREER MAP PERFORMANCE APPRAISAL

INVESTIGATOR # 14

Success Factors

Success Factor	Definition	Meets Expectations	Does Not Meet Expectations
Client Focus	Adopting client perspective in all interactions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Confidence	Acting with appropriate self-assurance; remaining poised in uncertain and ambiguous situations.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooperative	Maintaining responsibility and flexibility in working with others to achieve common goals.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Decisiveness	Acting promptly and confidently using sound judgement and common sense.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Integrity	Consistently honoring commitments. Taking responsibility for actions and words.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interpersonal Flexibility	Adapting to other personalities in a respectful manner that is conducive to goal achievement.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Responsiveness	Promptly acting upon requests or information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Self Starter	Motivated to learn or advance own expertise and value.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stewardship	Thinking future-oriented; acting and investing to build a stronger firm for tomorrow.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thoroughness	Systematically organizing and completing detailed tasks; checking accuracy and completeness of information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Self Starter:

Mike is very driven by exposure to new technologies or technical implementations. He is continually trying to learn and develop his expertise in a number of areas.

Cooperative:

Mike has been quite flexible and cooperative in working with the designers to ensure that the tutor workbench met their requirements. Mike must work to maintain this cooperative style in other areas, specifically administrative concerns. Mike has a tendency to always expect a little more in terms of project benefits (e.g. rental cars) than Andersen and client guidelines permit. Mike did not want out of town team members to share rental cars because of the distance between the apartment and the client site.

CAREER MAP PERFORMANCE APPRAISAL

Contribution

Mike has added a great deal of value to our team. He has designed and created a tutor component to provide feedback for this business simulation application. The tutor uses sophisticated rules and algorithms to determine appropriate feedback for the wide variety of student actions which can occur. This is the first project to undertake such a task, and Mike did not hesitate to rise to the challenge.

The product we have at the end of design has some performance issues, but Mike has determined an alternate solution and will implement that solution during the next phase of the project. This Tutor should be reusable on other engagements which subscribe to the same approach to providing feedback. If this approach is used on future client projects, it will reduce overall development cost to the client.

Mike takes the initiative to teach others new products, and during this phase helped several people learn the basics of Microsoft Access databases.

Mike needs more supervisory experience, and needs to learn how to actively manage the work efforts of those who work for him.

CAREER MAP PERFORMANCE APPRAISAL

Key Strengths

- Technical expertise, specifically in rule-based systems
- Support/assistance to other team members: always eager and willing to take time out to assist others or teach them new tools/techniques
- Initiative/desire to acquire knowledge and new skills

Areas for Development

- Supervision of others (needs more opportunity here)
- Writing/presenting at a level appropriate for intended audience
- Up-front collaboration and issue resolution of overall integration issues
- Looking for win-win
- Balance work effort w/budget

Suggestions for Next Assignment

Mike's next assignment should involve supervisory tasks, where he is responsible for managing others' work efforts. He likes to implement his own designs, but must learn how to break work into components which can be delegated to other team members.

In re Patent Application

Serial No. 09 / 219, 478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291



Exhibit D

**Employee Performance Review from Andersen Consulting,
documenting the performance and contributions of Michael Smialek as
an employee of Andersen Consulting for the employment period
12/1/1995 – 8/31/1996.**

CAREER MAP PERFORMANCE APPRAISAL

EVALUATEE

Name	Michael R. Smialek	Competency Group	Technology
Personnel Number	000814211	Skill Track	Technology Architecture
GMU/LMU	0283/080	Career Level	Consultant
Location	Chicago, United States	Role/Job Title	technical developer

EVALUATOR

Name	Suzanne Pink	Competency Group	Technology
Personnel Number	000681679	Career Level	Experienced Manager
Location	Chicago, United States	Industry/Market Unit	Cross Industry
Business Organization		Basis for Evaluation	Extensive

PERFORMANCE APPRAISAL

Project Title	GE FFC Development	Start Date	12/1/95
Client/Program Name	GE FMP	End Date	8/31/96
Job/Project Number	GEN042	Date of Discussion	9/30/96

APPROVAL

Name	David Smith	<input checked="" type="checkbox"/> Approved
Location	Hartford/Stamford, United States	
Business Organization	Consulting	
Career Level	Experienced Manager	
Industry/Market Unit	Products	
Role		

CAREER MAP PERFORMANCE APPRAISAL

Roles and Expectations

GE is replacing its instructor-led Financial Foundations Course (FFC) with a computer-based business simulation and presentation system. This period covers the implementation and system test phase of the project, as well as the Architecture packaging effort which took place after the system was complete.

Mike's role during this period was to develop a more efficient version of the Tutor module, re-writing the existing code in C++ to enhance performance. He was also responsible for assisting the development team in integrating the tutor into the overall architecture. Mike also participated in the system test of the application, and was responsible for fully documenting the functionality of the Tutor module upon its completion.

Mike was expected to develop a robust, technical solution within his budget constraints. He managed his own time, reporting status and developing reasonable resolutions to issues that arose. Further, he was responsible for determining specific work tasks necessary to achieve overall objectives, and delegating those tasks to leverage available resources. While Mike did not have direct supervisory responsibility during most of this period, he was expected to contribute to the overall knowledge capital of the team by transferring his knowledge to others. Mike did supervise Benoit Bertrand, and direct the work of others, during the packaging effort towards the end of the period.

During the packaging effort, Mike was responsible for leading the entire effort. He estimated the work, and managed all aspects of development. He was responsible for status reporting and quality of all final deliverables.

Finally, Mike had the opportunity to exhibit his communications skills in presentations to the team and other external groups (e.g. the EnCore team).

CAREER MAP PERFORMANCE APPRAISAL

Skill Domains

<u>Content Skill Domains</u>	<u>Standard</u>	<u>Assessed</u>
Application Programming	P3	P5
<p>In the development of the tutor component, Mike determined the optimal development environment, learned that language, and recoded the entire component to improve speed and accuracy. He was responsible for determining how the tutor would integrate with the rest of the application, and directed others in performing this integration. Further, he designed and created a workbench to allow designers to directly input the knowledge required for the tutor to perform.</p>		
Functional Design	P2	P2

CAREER MAP PERFORMANCE APPRAISAL

Standard

Assessed

Mike was responsible for designing the tutor component, and also the tutor workbench. He determined requirements through several conversations with designers, and has a good understanding of what the designers would like to make rule generation easier.

Functional/User Testing	P2	P2
	<ul style="list-style-type: none"> * Develop test scripts and expected results to test functional design. * Conduct functional/user tests. * Analyze discrepancies between actual and expected results. * Identify possible sources of discrepancies and recommend solutions. 	<ul style="list-style-type: none"> * Develop test scripts and expected results to test functional design. * Conduct functional/user tests. * Analyze discrepancies between actual and expected results. * Identify possible sources of discrepancies and recommend solutions.

Mike developed several testing utilities to test the outcome of tutor queries. He was able to assist the designers and testers greatly in identifying where errors occurred, and recommended solutions. However, because the tutor programming effort was behind schedule, Mike did not create formal test plans to document expected results. In the future, this should be a part of every testing effort.

Performance Testing	P3	P3
	<ul style="list-style-type: none"> * Identify and describe testing concepts. * Define a test plan based on performance requirements. * Determine which areas of the application or technical environment should be performance tested. * Verify performance test results meet requirements and obtain user sign-off. * Determine appropriate solution to address the causes of testing discrepancies. * Analyze potential system performance problems and make appropriate recommendations. 	<ul style="list-style-type: none"> * Identify and describe testing concepts. * Define a test plan based on performance requirements. * Determine which areas of the application or technical environment should be performance tested. * Verify performance test results meet requirements and obtain user sign-off. * Determine appropriate solution to address the causes of testing discrepancies. * Analyze potential system performance problems and make appropriate recommendations.

Mike did a good job meeting performance expectations for tutor response time. There was significant concern that immediate response time would not be possible, but Mike was able to modify the application to meet his requirements.

Project Management	P2	P1
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CAREER MAP PERFORMANCE APPRAISAL

	Standard	Assessed			
	<ul style="list-style-type: none"> * Define tasks and create team workplans with moderate supervision. * Balance quality of work with deadlines and budget. * Delegate work to others and monitor progress. * Identify issues affecting work progress and recommend solutions. * Communicate schedule variances and potential scope changes in status reports. * Provide timely performance feedback. * Compare and contrast the capability and service offerings of the various Competency Groups. 	<ul style="list-style-type: none"> * Plan and manage own work effort. * Document and communicate issues associated with own work. * Apprise supervisor of status, schedule variances and outstanding issues. * Balance quality of work with deadlines and budget. * Suggest ways to better accomplish assigned tasks. 			
<p>Mike has a good deal of difficulty estimating and reporting status on his work effort. During this evaluation period, Mike was significantly over budget on the development of the tutor, and significantly behind schedule in the development of the workbench packaging effort. He is reluctant to off-load tasks to others, and in turn creates unrealistic schedules for himself to complete the work. Further, Mike did not clearly communicate a serious schedule overrun (30 days) until 3 days before the scheduled end of the project. This delay in clearly communicating status nearly led to the cancellation of the project before any deliverables could be completed.</p> <p>Mike does not seem to realize the importance of tracking schedule and budget realistically, as he continues to delay reporting status even after the aforementioned mishaps. He must begin to take these activities seriously if he would like to be in a leadership position on a team.</p>					
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Technical Design</td> <td style="padding: 2px;">P3</td> <td style="padding: 2px;">P4</td> </tr> </table>			Technical Design	P3	P4
Technical Design	P3	P4			

CAREER MAP PERFORMANCE APPRAISAL

	Standard	Assessed
	<ul style="list-style-type: none"> * Identify system performance issues resulting from proposed functional design and recommend appropriate functional design changes. * Identify key technical design issues and recommend possible solutions. * Design interfaces between the system being developed and other systems with which it will communicate. * Comply with application architecture/technical architecture boundary standards. * Assess external system change requirements to accommodate interfaces, and create appropriate change requests. 	<ul style="list-style-type: none"> * Define the sequence in which processing is performed and how data is passed between processes. * Determine data and process distribution in a way that balances functional simplicity with technical feasibility. * Develop conceptual technical designs that comply with the technical architecture. * Specify deliverables to be produced during technical design effort. * Estimate application's cost, resource consumption and response time.

Mike's technical design skills are excellent. He was completely responsible for all tutor designs, and can clearly articulate the advantages of using this design for a particular application. He successfully estimated the application's cost and response time, but must remember to consider trade-offs between quality, cost, and schedule when making design decisions. Mike always wants to build the ideal solution, which is commendable, but sometimes is not realistic or required for the task at hand.

Technology Architecture

P2

P4

CAREER MAP PERFORMANCE APPRAISAL

	Standard	Assessed
	<ul style="list-style-type: none"> * Combine architecture components to build one area of an architecture. * Identify how architecture components will be utilized by applications. 	<ul style="list-style-type: none"> * Determine appropriate boundaries for the components of an architecture. * Articulate the strengths and weaknesses associated with utilizing alternative architecture solutions. * Recommend a given architecture solution. * Define custom architecture requirements around a known architecture solution. * Define what architecture deliverables need to be produced. * Balance quality requirements against development and maintenance costs in resolving architecture issues.
As mentioned, Mike's overall direction of the tutoring architecture was critical to the project's success, and he did an excellent job. He built custom components which are reusable on other engagements, contributing to the Firm's overall knowledge capital in the area of business simulation.		
Technology Specialization	P2	P4
	<ul style="list-style-type: none"> * Implement specific technology components in area of specialization. * Utilize existing tools and environment to support tasks. * Articulate the strengths and weaknesses associated with a given technology solution within area of specialization. 	<ul style="list-style-type: none"> * Recommend a given technology solution within area of specialization. * Determine an approach for providing technology solutions within area of specialization. * Articulate the strengths and weaknesses associated with utilizing alternative implementation environments for area of specialization.
Mike's skills in his area of expertise, rule-based knowledge systems, have been critical to our project. He not only brought a first-class solution to our project, but has continued to work with other projects to determine additional ways to implement the tutor for applications that are not training-specific. He has an excellent understanding of the abstraction of this development effort, in order to relate it to other project initiatives.		

CAREER MAP PERFORMANCE APPRAISAL

	Standard	Assessed
Other Content Skill Domains		
None		
No Basis Content Skill Domains		
Account Planning	P1	
Alliance Management	P1	
Business Process Acumen	P1	
Business Process Conversion	P1	
Facilitation	P2	
Industry Acumen	P1	
Process Consulting	P1	
Quality Management	P1	
Research	P1	
Sales Planning and Implementation	P1	
Technology Configuration and Deployment	P2	
Technology Operations	P1	
Specialization		

CAREER MAP PERFORMANCE APPRAISAL

		Standard	Assessed
Professional Qualities			
Business Writing	P2	P2	P2
	<ul style="list-style-type: none"> * Develop documents that effectively communicate to work groups who share your perspective. * Express ideas in a clear, concise manner. * Write at the appropriate level of detail for the audience. 	<ul style="list-style-type: none"> * Develop documents that effectively communicate to work groups who share your perspective. * Express ideas in a clear, concise manner. * Write at the appropriate level of detail for the audience. 	
<p>Mike created a very complex document for describing the tutor and how it functions. While this document was very detailed, it was not clearly organized in order for multiple audiences to gain an appreciation for the power of this tutor component. Mike needs to understand the audience, and adjust both his written and oral communication appropriately. Understanding the audience will help him be able to better articulate his thoughts and contributions to a wider audience, not just those that are technically proficient.</p>			
Influence	P2	P2	P2
	<ul style="list-style-type: none"> * Provide input that is considered in group or team decision making. * Secure cooperation from and/or persuade co-workers. * Impact team morale, sense of belonging and participation. * Viewed as credible, knowledgeable and sincere. * Demonstrate awareness of others' personal behavior style. 	<ul style="list-style-type: none"> * Provide input that is considered in group or team decision making. * Secure cooperation from and/or persuade co-workers. * Impact team morale, sense of belonging and participation. * Viewed as credible, knowledgeable and sincere. * Demonstrate awareness of others' personal behavior style. 	
<p>Mike's advanced programming skills made him a valuable contributor to our technical team. Other team members sought Mike's advice for difficult programming situations. As his manager, I relied heavily on Mike's technical knowledge in making decisions regarding the overall direction of the project.</p>			
Initiative	P3	P3	P3
	<ul style="list-style-type: none"> * Set personal standards that go beyond the expectation of others. * Identify and act upon opportunities to increase quality of team output. * Look for opportunities to make a contribution outside of immediate role. 	<ul style="list-style-type: none"> * Set personal standards that go beyond the expectation of others. * Identify and act upon opportunities to increase quality of team output. * Look for opportunities to make a contribution outside of immediate role. 	

CAREER MAP PERFORMANCE APPRAISAL

Standard

Assessed

Mike has a lot of initiative, as demonstrated by his commitment to the Tutor-Packaging project and his overall programming effort. When Mike gets involved in a task, he has a hard time putting it down and going home for the night. He actively seeks out opportunities for leveraging the work he's done to other projects. Also, Mike independently developed a presentation describing how several existing tools could be integrated to improve Andersen's solution delivery capability, and increase its market share in the knowledge worker market.

Innovation	P3	P4
	<ul style="list-style-type: none"> * Identify and use tools and techniques which can encourage innovative thinking. * Implement new approaches, methods, alternatives or solutions and identify potential impacts. * Develop new ways to solve problems when standard approaches do not apply. * Integrate or combine known approaches in novel ways to meet needs or objectives. 	<ul style="list-style-type: none"> * Facilitate innovative thinking by applying Best Practices and other tools. * Contribute new and innovative solutions to Andersen Consulting's knowledge capital. * Create programs and/or tools to encourage innovation in a process, project or function. * Formulate new useful explanations or approaches for complex problems, situations or opportunities. * Assess impact and value added associated with new approaches, methods, alternatives or solutions.

The tutor component and subsequent packaging effort clearly demonstrate Mike's ability to deliver innovative solutions. This is the first Firm project to develop a common tutoring component that delivers sophisticated, multi-level feedback, and is fully reusable on other engagements. The tutor workbench is designed to organize and structure the feedback generation process, so that the feedback is captured in a consistent and instructionally sound manner. As Mike continues to work on enhancing the tools he built, he will surely identify more opportunities to add value to a variety of projects.

Leadership	P2	P2
	<ul style="list-style-type: none"> * Contribute to a positive work environment through own behaviour. * Build the trust and confidence of others at all levels. * Promote sharing of information. * Demonstrate commitment through actions. * Consider balance between others' work and personal priorities. 	<ul style="list-style-type: none"> * Contribute to a positive work environment through own behaviour. * Build the trust and confidence of others at all levels. * Promote sharing of information. * Demonstrate commitment through actions. * Consider balance between others' work and personal priorities.

CAREER MAP PERFORMANCE APPRAISAL

	Standard	Assessed
<p>Mike was responsible for leading the Packaging effort, yet only supervised one person during this time. Mike needs more experience leading a larger team, so that he can improve his overall management and supervisory/delegation skills. He does a good job in sharing information with others, and has secured the trust of others by continuing to deliver quality solutions.</p> <p>To be an effective leader, however, Mike must become more effective at generating alternative solutions when the best-base scenario is not feasible.</p>		

Negotiation	P2	P2
	<ul style="list-style-type: none"> * Resolve issues with subordinates. * Represent Andersen Consulting's viewpoint in issue resolution. 	<ul style="list-style-type: none"> * Resolve issues with subordinates. * Represent Andersen Consulting's viewpoint in issue resolution.

Oral Communication	P3	P3
	<ul style="list-style-type: none"> * Organize discussion in a logical manner. * Express ideas to individuals and groups, both in formal and informal settings. * Communicate intended messages clearly when delivering formal presentations. * Develop messages that convey alternative viewpoints. * Respond to questions with accurate and complete answers. * Use effective non-verbal communication during formal presentations. 	<ul style="list-style-type: none"> * Organize discussion in a logical manner. * Express ideas to individuals and groups, both in formal and informal settings. * Communicate intended messages clearly when delivering formal presentations. * Develop messages that convey alternative viewpoints. * Respond to questions with accurate and complete answers. * Use effective non-verbal communication during formal presentations.
<p>Mike has improved in this area during this time period. He is getting much better at delivering a clear message regarding highly technical information. He does need to get more experience in this area to continue to improve these skills.</p>		

Personnel Development	P2	P2
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CAREER MAP PERFORMANCE APPRAISAL

	Standard	Assessed
	<ul style="list-style-type: none"> * Pursue personal career development goals. * Balance career expectations and business needs. * Seek increased contribution and level of responsibility. * Provide informal feedback to others. * Seek out mentors for coaching and counselling. 	<ul style="list-style-type: none"> * Pursue personal career development goals. * Balance career expectations and business needs. * Seek increased contribution and level of responsibility. * Provide informal feedback to others. * Seek out mentors for coaching and counselling.

Mike has a good understanding of the direction he intends to take within the Firm, and works diligently to achieve his objectives. He takes responsibility for his career, and seeks out opportunities to add value to a variety of projects. Over the past few months, Mike has positioned himself on a part time project in addition to the tutor packaging effort. This other project is allowing Mike to develop opportunities to use the tutor outside of training, and to envision new tools that can be integrated with it.

Problem Solving	P2	P2
	<ul style="list-style-type: none"> * Break problems into distinct and manageable parts. * Develop supporting data and rationale for alternative solutions. * Refer to precedents in determining solution alternatives. * Recommend solution to problem from various alternatives. 	<ul style="list-style-type: none"> * Break problems into distinct and manageable parts. * Develop supporting data and rationale for alternative solutions. * Refer to precedents in determining solution alternatives. * Recommend solution to problem from various alternatives.

Mike is very good at solving technical or programming problems, and does so very systematically. He needs more experience solving project-related problems (scope, budget, personnel), as he at times presents solutions which are unrealistic given the organization of the project or the client. With more experience, Mike will be able to effectively handle these situations as they arise.

Professional Relationships	P2	P2

CAREER MAP PERFORMANCE APPRAISAL

	Standard	Assessed
	<ul style="list-style-type: none"> * Build productive working relationships. * Earn respect of others. * Model sound judgement regarding personal conduct. * Participate in professional and/or community organizations. * Develop a resource network through the exchange of information. 	<ul style="list-style-type: none"> * Build productive working relationships. * Earn respect of others. * Model sound judgement regarding personal conduct. * Participate in professional and/or community organizations. * Develop a resource network through the exchange of information.

Mike's knowledge and experience have clearly made him a known and valuable resource in the Firm. He has built solid relationships on this project, and also on other GBS-related projects throughout the Firm.

Teamwork/Collaboration	P2	P2
	<ul style="list-style-type: none"> * Encourage others to share ideas to develop team cohesion. * Listen, while withholding judgement, to all viewpoints. * Participate in goal setting and problem solving. * Identify barriers to effective teamwork. * Help other team members who need assistance. * Be open and flexible to new ideas that may alter team goals. 	<ul style="list-style-type: none"> * Encourage others to share ideas to develop team cohesion. * Listen, while withholding judgement, to all viewpoints. * Participate in goal setting and problem solving. * Identify barriers to effective teamwork. * Help other team members who need assistance. * Be open and flexible to new ideas that may alter team goals.

Mike's working relationship with Benoit Bertrand, the other person working on the packaging effort, was very collaborative and supportive. Mike helped Benoit with design ideas and programming tasks to complete their common goal. Mike works well with others whose skills he respects, and he should remember to offer this same level of support in all situations.

Mike has also made an effort to work with other teams who are doing similar work, including ACE (Andersen Consulting Education), to share ideas and foster reuse of knowledge capital.

No Basis Professional Qualities

Diversity Management	P2	P0
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CAREER MAP PERFORMANCE APPRAISAL

	Standard	Assessed
	<ul style="list-style-type: none">* Supervise people with different backgrounds effectively.* Build relationships in workgroups with different expertise or focus than own.	* item not found#

CAREER MAP PERFORMANCE APPRAISAL

Success Factors

Success Factors	Definitions	Meets Expectations	Does Not Meet Expectations
Client Focus	Adopting client perspective in all interactions.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Confidence	Acting with appropriate self-assurance; remaining poised in uncertain and ambiguous situations.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Cooperative	Maintaining responsibility and flexibility in working with others to achieve common goals.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Decisiveness	Acting promptly and confidently using sound judgment and common sense.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Integrity	Consistently honoring commitments. Taking responsibility for actions and words.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Interpersonal Flexibility	Adapting to other personalities in a respectful manner that is conducive to goal achievement.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Responsiveness	Promptly acting upon requests or information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Self Starter	Motivated to learn or advance own expertise and value.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Stewardship	Thinking future-oriented; acting and investing to build a stronger firm for tomorrow.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Thoroughness	Systematically organizing and completing detailed tasks; checking accuracy and completeness of information.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

CAREER MAP PERFORMANCE APPRAISAL

Contribution

Mike was the primary contributor to the successful implementation of a reusable tutor and workbench for capturing and delivering feedback in simulated business environments. His technical skills, and ability to fully understand the functional need, allowed him to single-handedly build this component of the project. In order to do this, Mike needed to develop C++ skills before undertaking this effort.

Mike has not only contributed to the success of this project, but also to the success future business simulation engagements. He has a keen understanding of how this component can be reused on other projects, not limited to training applications. His rule-based method for delivering robust feedback can be used in performance support and other knowledge-based applications.

Mike led the effort to package all project deliverables and make them available through the Knowledge Exchange, and has worked with other project teams to discuss reuse of the GE architecture on other engagements. He is currently working with the GE team to use the enhanced workbench for the second semester of the FMP program.

During this period, Mike worked fairly independently, and needs more experience directing others. He prefers to work alone rather than with others who are not at his skill level, but he needs to work on developing his skills in others. Mike also needs to understand the importance of effective estimating, as well as schedule and budget tracking. He does not seem to understand the impact of missing schedules/budgets.

CAREER MAP PERFORMANCE APPRAISAL

Summary

- Key Strengths

- * Technical skills - rule-based knowledge systems
- * Technology vision: understanding the power of his tutor module, and the value it can bring to a variety of projects
- * Ability to quickly learn functional skills and new products (eg C++)

- Areas for Development

- * Project management: estimating, tracking, and reporting status
- * Writing skills: learning to write at a level appropriate for the audience
- * Supervisory skills: transferring knowledge and directing work of others

- Suggestions for Next Assignment

Mike should have the opportunity to lead a team of developers, but needs close supervision of his project management tasks to further develop these skills. He should look for projects where the FFC Tutor can be reimplemented and continue to be enhanced.

CAREER MAP PERFORMANCE APPRAISAL

Skills

Skill Types/Skills

Experience Level

Skills are not available for selected CDM

Intel Patent Application

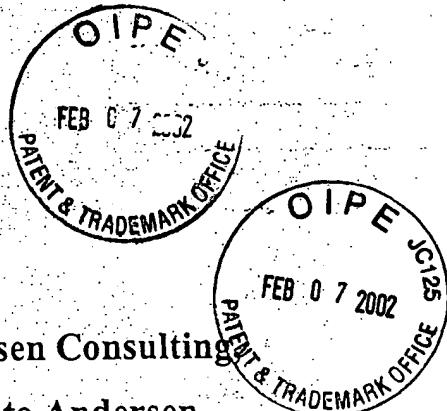
Serial No. 09/219,478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291

Exhibit E



Management Contribution Summary from Andersen Consulting
documenting the contribution of Michael Smialek to Andersen
Consulting programs and initiatives for the employment period
September 1995 – August 1996.

~~ANDERSEN
CONSULTING~~

TIS WW

MANAGEMENT CONTRIBUTION
SUMMARY
Analysts/Consultants

Name: Michael R Smialek

Office: 283 / 95

Group: ETS / KT

Check one: Analyst Consultant

Date Promoted 03/95 (Consultants only)

Competency Group/Skill Track: Technology / Tech Arch

Annual Reviewer or Sponsor Name:

Annual Reviewer or Sponsor Signature:

Period Covering: Sept, 1995 - Aug, 1996

1. Client Service (Client Project & New Business Development; promotion and proposal):

General Electric Corp., Financial Foundations Course, 6/95 - 11/96

The project was to develop a multimedia business simulation training application to teach the fundamentals of financial accounting to the client's finance managers.

- Conceived, designed, and developed a reusable Intelligent Coaching Agent Tool to significantly reduce the cost and risk of integrating feedback functionality into training and IPS applications. Uses rule-based approach to analyze student's work and compose feedback with sub-second response time. Currently being reused on second semester development effort and proposed for reuse at ACE (Andersen Consulting Education). C++ based tool is portable to VB and Delphi development efforts.
- Designed and developed workbench for managing ICAT Knowledge. Enables instructional designers to implement analysis and feedback behavior without assistance from developers. Workbench automatically generates documentation.
- Designed and developed regression testing and debugging architecture for ICAT Knowledge.
- Responsible for identifying and resolving issues related to international distribution.
- Participated in laptop benchmarking and selection.

General Electric Corp., Financial Analysis for Operations Course, 10/96

The project is the second semester of training for the GE's finance managers.

- Jump started instructional design team for use of new ICAT workbench.
- Participated in design of simulation engine and integration with ICAT.

2. TO Program activities

3. Knowledge sharing (reuse, creation & internal transfer):

GE FFC Knowledge Packaging, 4/96 - 7/96

- Led technical architecture packaging effort for GE FFC engagement. Artifacts included documentation, architecture components, reusable code fragments, media management tools, Intelligent Coaching Agent Tool.
- Architecture currently being reused on 2nd semester of FMP course and is available on Knowledge Exchange for other engagements.

ICAT Workbench Enhancement Effort, 4/96 - 11/96

- Designed and led development effort of improved workbench for ICAT. New workbench based on Visual C++ and Microsoft Foundation Classes allows instructional designers to configure feedback and rule behavior in intuitive drag-and-drop interface. Visual representation of knowledge speeds development and makes ICAT easier for new users to learn.
- Designed and developed knowledge-oriented C++ class framework that can be reused on other knowledge engines and editors (e.g. P&C Claims GMO).
- Visited ACE to introduce ICAT tools and explore opportunities for reuse on AC internal training development.

3. Knowledge sharing (reuse, creation & internal transfer) (cont)

P&C Claims Global Market Offering, 6/96 - Present

The effort is to develop knowledge capital and solution delivery capability in the area of property and casualty insurance claims processing. It leverages our engagement experience with Profiling in the insurance underwriting domain. GMO is to include data analysis/data mining capabilities, decision automation, decision performance tracking, workflow, and DS/EIS capabilities. Specific deliverables include: Scope Document, Conceptual Design, Workplan, Application Simulation, Profiling Methodology, other presentation, marketing, and training materials.

- Contributed to all deliverables.
- Responsible for conceptual design of Decisioning Engine and Profile Maintenance Workbench. Also responsible for related sections of Scope Document and Workplan.
- Designed domain-generic approach to Profiling that will significantly reduce the cost and risk of applying Profiling to new domains and will allow us to grow our market more rapidly. Tools will be reusable outside of insurance domain and will make it feasible to automate even trivial decision making. Also makes it possible for Andersen to amass profile knowledge capital across industry markets.
- Leading effort to develop methodology related to generic Profiling approach.
- Contributed plan to reuse knowledge-oriented class framework from ICAT to reduce cost of Decisioning Engine and Profile Maintenance Workbench.

Knowledge Worker Tools

- Developed proposal to integrate tools created on several projects to enhance the firm's solution delivery capability in the area of knowledge worker oriented applications (ie Business Simulation Training, Performance Support, Decision Support, Decision Automation).

Participate regularly in KX discussion databases.

Contributed to SCA and Technology Library databases.

Presented at Business Simulation Workshop in St. Charles.

4. List any skills or vendor/product knowledge you have developed this year:

- Microsoft Visual C++
- Microsoft Foundation Classes
- New Standards (fuzzy reasoning vendor)
- Object FX (geographic mapping vendor)

5. Other activities, i.e. task forces, recruiting, etc.

In re Patent Application

Serial No. 09/219 478

Filed; December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291

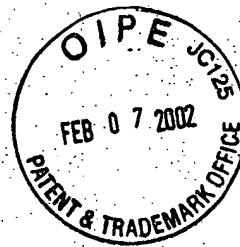


Exhibit F

Letter from L. Keith Stephens to Michael Smialek dated 12/16/1999.

HICKMAN
STEPHENS
COLEMAN

VIA FACSIMILE WITH
CONFIRMATION BY CERTIFIED MAIL

December 2, 1999

Mike Smialek
President
Knowledge Dynamics
835 Laramie Avenue
Glenview, IL 60025

RE: U.S. Patent No. 5,987,443

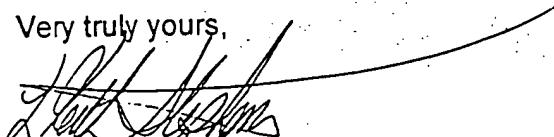
Dear Mr. Mitchell:

On November 16, 1999, Andersen Consulting was awarded US Patent 5,987,443 ('443 patent) "SYSTEM, METHOD AND ARTICLE OF MANUFACTURE FOR A GOAL BASED EDUCATIONAL SYSTEM." A copy of the '443 patent is enclosed.

We are familiar with Knowledge Dynamics products. It appears to us that these products use inventions claimed by the '443 patent and, consequently, I feel obliged to give you notice of this. Andersen Consulting will be willing to grant nonexclusive licenses to Knowledge Dynamics (and anyone else who needs a license) for future use of the '443 patent. However, my inclination is to contact you again about the best way to resolve this next week, once you have had an opportunity to review your technology and business needs.

In the interim, I would be glad to have you review the '443 patent and, if you believe that Knowledge Dynamics does not need a license, please let us know your reasons. I can be reached at (408) 558-7890. Otherwise, I will get back to you about this as soon as I can.

Very truly yours,



L. Keith Stephens
Hickman Stephens Coleman & Hughes

cc: Vicki St. John

In re Patent Application

Serial No. 09 / 219 , 478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291

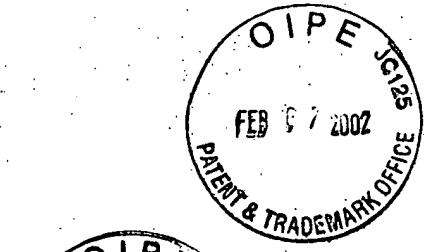


Exhibit G

Letter from Michael Smialek to L. Keith Stephens, and others dated

2/9/2000.



Mike Smialek
1548 Meadow Lane
Glenview, IL 60201
MikeSmialek@Hotmail.com
847-869-1595
February 09, 2000

L. Keith Stephens
Hickman, Stephens, Coleman & Hughes
200 Page Mill Rd.
Palo Alto, CA 94306

Dear Mr. Stephens,

I was an employee of Andersen Consulting from August, 1992 – August, 1998 and was deeply involved in several of their Business Simulation client engagements. I have personal first hand knowledge that every aspect of the subject matter described in the claims of US Patent No.'s 5987443, 6016486, 6003021, 6018730, 6018731, 6018732, 6023691, and 6023692 as well as what is described in the specifications of said patents had been reduced to practice, was ready for patenting, and was used commercially on for-fee client engagements in the context of Goal Based Learning as early as 1993, well before the critical date of December 22, 1997.

This subject matter was used in many demonstrations and offers for sale. Several of said offers for sale subsequently became for-fee client projects. Completed business simulation applications as well as the tools, components, architectures, and methods used to develop them were demonstrated during sales activities to prospective clients not bound by confidentiality agreements well before the critical date. The tools, components, architectures, and methods were used commercially on for-fee client engagements well before the critical date.

The descriptions of the patents disclose several components:

1. The rules based expert system (Tutor),
2. The spreadsheet component (Simulation Engine),
3. The system dynamics component (SysDyn Engine),
4. The ICA Meeting component,
5. The HTML help component,
6. The InBox component

They also disclose several workbenches:

1. ICAUtils Workbench, which houses the other workbenches,
2. ETSICA (Tutor) Workbench, which edits data used by the Tutor,
3. Regression Test workbench, which replays user acceptance tests,
4. Simulation Workbench, which simulates a user interface to test Tutor feedback,
5. Simulation Object Editor, which associates spreadsheets to Tutor data,
6. SysDyn Workbench, which simulates a user interface to test Tutor feedback,
7. SysDyn Object Editor, which associates Powersim data to Tutor data,
8. ICAMeeting Workbench, which simulates a user interface to test Tutor feedback,
9. ICAMeeting Object Editor, which associates ICAMeeting data to Tutor data,
10. Doc Maker, for saving Tutor data from a database into serialized files

11. Object Viewer, for statically viewing Tutor data.

All of the above subject matter was reduced to practice, ready for patenting, and in commercial use on the following for-fee client engagements:

1. Financial Foundations Course, General Electric Corp, 1995-1996
2. Financial Accounting for Operations, General Electric Corp, 1996
3. Business Decision Making, Pratt & Whitney, 1996-1997
4. Strategic Business Partnering Course, Lucent Technologies, 1997-1998

All of Andersen Consulting's ideas and theories about Goal Based Learning and Business Simulation had already been in commercial use on the following projects:

1. Business Practices Course, (used internally, demonstrated externally), approximately 1993-1994
2. Credit Operations and Risk Evaluation, GE Capital, 1993-1995
3. enCORE, GE Capital, 1995-1997

I would urge you to ask Andersen Consulting employees, and specifically William Stoddard, about these client engagements. I'm sure you will find that all of the subject matter in question is ineligible for patent.

In addition to the uncorrectable defects related to the statutory bar, the patents suffer from misjoinder and nonjoinder of inventorship. I was in fact the primary inventor of '443, '021, '732, and '692. I was a contributing inventor of '486, '730, '731, and 691. Several of the patents list inventors that made no contribution and omit other inventors that made contributions.

Based on comments made by William Stoddard of Andersen Consulting, I believe there are additional patents that have been applied for but not yet issued. It is very likely that they suffer from the same defects. As I understand it, you have a duty to disclose this information to the Patent and Trademark Office with respect to the issued and pending patents.

Please contact me within ten days to discuss these issues. I would be happy to answer any questions you may have. If necessary I can furnish you with names of current and former AC employees and client employees that can verify the above information.

Sincerely,

Mike Smialek

CC: Vicki St. John
CC: Kevin Rhodes
CC: Robert Beiser

In re Patent Application

Serial No. 09 / 219 , 478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291



Exhibit H

Fax from Robert Beiser to Michael Smialek of a letter from Kevin Rhodes to Robert Beiser dated 2/25/2000.

KIRKLAND & ELLIS

MEMBERSHIPS INCLUDING PROFESSIONAL CORPORATION

200 East Randolph Drive
Chicago, Illinois 60601

312 831-2000

Facsimile
312 831-2200

Kevin H. Rhodes
To Call Writer Directly:
(312) 831-2373
kevin_rhodes@chicago.kirkland.com

February 25, 2000

**VIA FACSIMILE
& FIRST-CLASS U.S. MAIL**

Robert S. Beiser, Esq.
Michael Best & Friedrich
77 West Wacker Drive
Suite 4300
Chicago, IL 60601-1635

Dear Mr. Beiser:

I write on behalf of Andersen Consulting LLP in response to Mike Smialek's letter, dated February 9, 2000, to L. Keith Stephens, Esq. I understand that you are representing Mr. Smialek in connection with the matter discussed in his February 9th letter.

We understand that our respective clients are involved in discussions aimed at resolving this matter. In addition, we are reviewing the assertions made in Mr. Smialek's letter, and we will respond to you in due course. Please direct future correspondence concerning this matter to my attention.

Very truly yours,

Kevin H. Rhodes

KHR/skp

cc: L. Keith Stephens, Esq. (via facsimile)
Vicki St. John, Esq. (via facsimile)

London

Los An

ANDERSEN CONSULTING'S
RESPONSE TO THE LETTER I SENT
ON 2/09/2000

In re Patent Application

Serial No. 09 / 219 , 478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291



Exhibit I

Letter from Michael Smialek to Examiner Michael Pender dated

6/15/2000.

June 15, 2000

Mike Smialek
Knowledge Dynamics
1840 Oak Ave
Evanston, IL 60201
MikeSmialek@Hotmail.com
(H)847-486-0501
(W)847-869-1595

Dear Mr. Pender,

I am writing to follow up on our phone conversation on June 7, 2000. On December 22, 1998 my former employer, Andersen Consulting, filed 25 patent applications for subject matter related to an area of computer based training known as Business Simulation. Andersen Consulting failed to disclose information material to the patentability of the inventions claimed in the patents. Specifically, they failed to disclose that all of the inventions claimed in the patents had already been in commercial use for more than a year before the application date. Moreover, all of the subject matter disclosed in the Specifications had already been in commercial use for more than a year before the application date. They also misrepresented the inventorship of the inventions.

As of this writing, 17 of the 25 applications have been issued and posted to the database, 7 have had notice of allowance, and 1 is in examination. Below is a table listing the application numbers and patent numbers where applicable.

<u>Appl#</u>	<u>Pat#</u>	<u>Appl #</u>	<u>Pat#</u>
09/218,977	5,987,443	09/218,968	6,016,486
09/219,481	6,003,021	09/221,217	6,023,692
09/219,080	Allowed	09/218,741	6,029,158
09/219,477	6,067,537	09/218,906	6,029,156
09/219,055	6,032,141	09/218,976	6,018,732
09/218,995	Allowed	09/218,726	6,018,731
09/221,138	6,073,127	09/221,608	Allowed
09/219,086	6,023,691	09/219,070	Allowed
09/219,079	Allowed	09/219,478	In Exam
09/219,201	6,026,386	09/219,524	6,064,998
09/219,479	6,067,538	09/218,749	6,018,730
09/218,945	Allowed	09/219,480	6,029,159
09/219,088	Allowed		

The patents make use of what I believe is called an omnibus specification – they have the same or nearly identical specifications, but have different sets of claims. In this letter I will provide information that I believe will substantiate beyond any doubt, the following facts:

- a) All of the inventions claimed in all of the patents issued as of this writing, as well as every aspect of the subject matter described in the omnibus specification, had been

- reduced to practice, were ready for patenting, and were in commercial use on for-fee consulting engagements well over a year before the application date.
- b) The inventions and subject matter had been demonstrated in offers for sale to prospective clients not bound by confidentiality agreements well over a year before the application date.
 - c) The inventorship on the patents issued as of this writing is incorrect. I was the primary inventor on most or all of the patents. Contributing inventors were omitted from many of the patents. Individuals making no contribution were listed as inventors on many of the patents.
 - d) Andersen Consulting partner William Stoddard and the applying attorney, L. Keith Stephens, were well aware of the on sale bar issues and inventorship issues before the application date, but failed to execute their duty to disclose the information to the PTO.

Background

I was employed by Andersen Consulting from August 1992 – August 1998 and was deeply involved in their Business Simulation Practice. All of the statements presented here are from personal first hand knowledge unless designated otherwise.

Andersen Consulting performed a business simulation development project for General Electric Corp. called Financial Foundations Course (FFC). This project began in late 1994 or early 1995 and continued through June 1996. I was staffed full time on the project from July 1995 through May 1996.

Andersen Consulting performed a second business simulation project for GE called Financial Accounting for Operations (FAO). This project began in late May 1996 and continued through early 1997. I was staffed part time on the project making periodic visits to the site to provide design guidance.

All the primary independent claims in the following patents depend on the "rules based expert system with a spreadsheet object component":

5987443, 6003021, 6067537, 6032141, 6073127, 6023691, 6026386, 6067538,
6023692, 6029158, 6029156, 6018732, 6018731, 6064998, 6018730, 6029159.

The "rules based expert system" is known internally at Andersen Consulting as the Tutor. I conceived of, designed, and implemented the "rules based expert system" on the GE FFC project. The "rules based expert system" was ready for patenting and used commercially in February of 1996.

The "spreadsheet object component" is known internally at Andersen Consulting as the Simulation Engine. In April of 1996, I conceived of and conceptually designed the "spreadsheet object component" and its usage with the "rules based expert system". Benoit Bertrand reduced the "spreadsheet object component" to practice. The "rules based expert system" and "spreadsheet object component" were used together commercially on the GE FAO engagement by October, 1996.

The "rules based expert system and spreadsheet object component" were demonstrated, offered for sale, and ultimately resold to Pratt & Whitney Corp. for a third business simulation development effort called Business Decision Making (BDM). This sales activities for this project began prior to April of 1997. The project began in May of 1997 and ended some time in 1998.

These commercial uses make the "rules based expert system with a spreadsheet object component" ineligible for patent.

Patent# 6016486 claims a method for creating a presentation based on a linked list. This is known internally at Andersen Consulting as the Activity/Task Time Line and Coach Approval logic. These items were completed and used commercially in late 1995 on the GE FFC project.

All the subject matter disclosed in the omnibus specification was used commercially more than one year before the application date of December 22, 1998. I do not know what is claimed in the patents that have not yet issued, but if they use the same omnibus specification then they must be invalid.

Enclosed with this letter is a copy of a letter I sent to the applying attorney, L. Keith Stephens, two other AC attorneys, and my attorney, Robert Beiser, on Feb 09, 2000. The letter was written when only eight of the patents had issued, but most of what is stated applies to the other nine patents that have issued since then. The letter contains some additional information that I will not repeat here. It would be beneficial if you read that letter before going further.

L. Keith Stephens did not respond to the letter. Kevin Rhodes, another AC attorney, sent a letter to Robert Beiser indicating that they were "investigating the assertions" made in the letter. That letter is attached.

Inventorship Issues

To verify my contributions, examine columns 65 through 124 of the 5,987,443 patent. They contain some C source code of the "rules based expert system". In the comments you will see my name listed as the author. Although my name is not listed in the comments for every function, I did in fact conceive, design and write all of this code and all of the undisclosed code that resides in the bodies of these functions. This code is used in the omnibus specification and the "rules based expert system" is claimed in all the independent claims of the patents.

I was also a contributing or primary inventor on the other subject matter described in the omnibus specification and claimed in the patents. Therefore I believe I should be listed as a contributing or primary inventor on all of the patents and my statements should be given the same weight as any listed inventor.

I understand that inventorship defects are correctable, but I believe, the inventorship of the patents was deliberately misrepresented, making it uncorrectable.

William Stoddard, an Andersen Consulting partner, had directed the initiative to apply for the patents. I received a phone call from William Stoddard on 3/28/2000. I took careful notes of the conversation. During the call I confronted him with the issues I raised in the 02/09/2000 letter. He stated that "You weren't here, so you weren't named". I took this to mean that I wasn't named because I was no longer employed at Andersen Consulting when the patents applications were being prepared, therefore I didn't deserve to be named. I subsequently contacted some of the people who were named as inventors and found out that inventorship

was assigned arbitrarily as a reward for not leaving the firm. Many individuals who made no contributions are listed as inventors, and several other contributors are not listed. Incredibly, during the call Mr. Stoddard also conceded that the "Tutor is prior art" and the "Simulation Engine is prior art".

I can provide many more details regarding inventorship if they are required. I am also sure if you contact the listed inventors directly they will confirm my contributions to the patents.

Commercial Use on For-Fee Client Engagements

In order to substantiate that the subject matter was used commercially more than a year before the filing date, I will explain the origins of some of the figures and text of the patents. I will use the 5,987,443 patent as the basis for this.

The figure at the bottom of the first page of the '443 patent is a PowerPoint slide that I created in May or June of 1996 describing the use of the Tutor component on the GE FFC engagement. The two screen shots in the slide are taken directly from the GE application. The GE FFC engagement started in late 1994 or early 1995 and continued through June of 1996. I was on the project from July of 1995 through May of 1996.

Figures 5 through 10 of the patent were taken from a PowerPoint presentation that I created in the summer of 1997 called 'Next Generation Business Simulation'. Figures 7,8, and 9 were reused from an insurance related presentation I originally created in the summer of 1996. Figure 8 includes a representation of a 1992 Ford Taurus and a 1996 Volvo 850. These were the cars I owned when I created the slide in 1996.

Figures 11-21, 27-32, and 36-37 were taken from a whitepaper I created in May-June of 1996 called 'The Intelligent Coaching Agent Tool'. The whitepaper was created to show a progression of feedback interactions with a business simulation. I captured these screen shots from the GE FFC application. I altered the screen shots in figures 11 and 12 to obscure the client's name. Where it says "E Bikes" in bold letters, the actual application says "GE Bikes". The squiggly 'e' next to "E Bikes" replaced the GE logo from the actual application.

The 'The Intelligent Coaching Agent Tool' whitepaper is referred to in the specification of the patent in column 24 near line 45. The patent directs the reader to the 'ETA Home Page on the Knowledge Exchange'. The ETA home page and the Knowledge Exchange are not accessible outside of Andersen Consulting. This text is in the specification because the applying attorney or someone else involved in the patent application simply cut and pasted the text from the whitepaper into the specification without reading or understanding it.

Figures 22-26 were taken from another document that I created in April of 1996.

Similarly, almost all of the remaining screenshots were created by various authors, including myself, more than 1 year before the application date. All were shots of tools or applications that were used commercially on client engagements more than 1 year before the filing date.

Neil Flanagan, Nancy Taylor, and Paul Beuker (or Beucker) were the primary client contacts for the GE FFC and subsequent GE FAO engagements. I don't know if any of them are still employed at GE. David Smith, a current Andersen Consulting employee, was the project manager on the GE FFC engagement. Martha O'Connor, a former Andersen Consulting employee, was the project manager on the GE FAO engagement. William Stoddard, an

Andersen Consulting Partner, was a project partner on the GE FFC and GE FAO engagements. The Andersen contacts are well aware of the projects and dates and can confirm my contributions. The GE contacts can confirm the dates of the projects in question.

I can provide many more facts and contact information regarding Andersen's commercial use of the subject matter on client engagements if necessary.

Commercial Use in Demonstrations for Prospective Clients

Andersen Consulting sometimes offers a discount to its clients if the client agrees to allow other prospective clients to visit the development site. During the development of the GE FFC project, Andersen Consulting hosted several such visits, during which the business simulation application and tools were described and showcased and offered as selling points for Andersen Consulting's business simulation development services.

As one specific example, I conducted a presentation and demonstration on February 20, 1997 for a group of employees and executives of Allstate Insurance, Co. on Allstate premises. I demonstrated the completed GE FFC business simulation application, as well as the components and workbenches used in business simulation development. The presentation slides described the benefits of business simulation and how Andersen Consulting used the tools and workbenches on business simulation engagements. This was an Andersen Consulting directed promotional demonstration of the inventions to an audience of approximately 20 people, none of whom were bound by any type of non-disclosure or confidentiality agreement. It was held in the Allstate lunchroom and anyone who saw the announcement and was interested was allowed to attend. Enclosed is a copy of my time report from that period with the date and time circled.

In addition to the demonstration I performed and the visits on the GE FFC project, several different completed business simulation applications as well as the completed tools were demonstrated many times by William Stoddard and others for many current and prospective clients more than 1 year before the filing date. Although I do not have the specifics of these events, I am sure that the events, the dates, and their significance to patentability were well known to the principals at Andersen Consulting who were driving the patent application activities.

Failure to Disclose

In May of 1998, shortly after I announced my intention to leave Andersen Consulting, William Stoddard started the initiative to apply for the patents. I researched patent law and became aware of the statutory bar and inventorship rules. On several occasions between May 1998 and my departure in August 1998, I explained to Mr. Stoddard that Andersen should not be patenting any of the items because the statutory bar had so clearly expired. I also explained that if they were going to try to patent the inventions in spite of the statutory bar that they were required to list me as an inventor. I also explained these issues to many of the other employees in the business simulation practice.

After I left the employ of Andersen Consulting in August of 1998, I performed consulting work for them from September, 1998 – November, 1998. During this period they confirmed that they were applying for multiple patents on the business simulation subject matter, but they did not disclose to me any specifics of the applications.

During this period I continued to remind them that the inventions were ineligible because of the statutory bar and that they were required to list me as an inventor. I personally voiced these concerns on multiple occasions to individuals at Andersen Consulting including Brian Beams, an associate partner in charge of technology, and William Stoddard, among others. On each of these occasions the reply was that the patent attorneys were aware of the situation and had "found a way around the statutory bar".

I remained in contact with several Andersen Consulting employees after I left the firm. Several employees told me that during conversations with the applying attorney, L. Keith Stephens, prior to the filing of the applications, they informed him of my contributions to the inventions and of the commercial uses of the subject matter. Furthermore, my name was prominently displayed on documents I authored that were used in the omnibus specification. I believe Mr. Stephens was well aware of the statutory bar issues and of my contributions to the inventions. To my knowledge he made no attempt to contact me prior to the filing of the patents.

Next Steps

My goal is to have the patents recalled based on the statutory bar and inventorship issues. I believe there may be three avenues available: protest, request for reexamination, and a commissioner-initiated recall. I am not sure if a protest is still available on the patents that have already issued.

Please reply to this letter to confirm that you received it. I would appreciate it very much if you could answer the following questions:

- a) What formal processes are available to me in challenging the issued patents?
- b) What formal processes are available to me in challenging the pending patents?
- c) Are the facts I've presented enough to cause the commissioner to initiate a recall on the issued patents?
- d) Do I need to submit a formal protest on application 09/219,478 for you to be able to take action?

A self-addressed, stamped envelope is enclosed.

Please contact me if you have any questions or need clarification or more information. I can give you any other details that you may need.

Thank you very much for your time in reading and responding to this letter.

Sincerely,

Mike Smialek

Mike Smialek
1548 Meadow Lane
Glenview, IL 60201
MikeSmialek@Hotmail.com
847-869-1595
February 09, 2000

L. Keith Stephens
Hickman, Stephens, Coleman & Hughes
200 Page Mill Rd.
Palo Alto, CA 94306

Dear Mr. Stephens,

I was an employee of Andersen Consulting from August, 1992 – August, 1998 and was deeply involved in several of their Business Simulation client engagements. I have personal first hand knowledge that every aspect of the subject matter described in the claims of US Patent No.'s 5987443, 6016486, 6003021, 6018730, 6018731, 6018732, 6023691, and 6023692 as well as what is described in the specifications of said patents had been reduced to practice, was ready for patenting, and was used commercially on for-fee client engagements in the context of Goal Based Learning as early as 1993, well before the critical date of December 22, 1997.

This subject matter was used in many demonstrations and offers for sale. Several of said offers for sale subsequently became for-fee client projects. Completed business simulation applications as well as the tools, components, architectures, and methods used to develop them were demonstrated during sales activities to prospective clients not bound by confidentiality agreements well before the critical date. The tools, components, architectures, and methods were used commercially on for-fee client engagements well before the critical date.

The descriptions of the patents disclose several components:

1. The rules based expert system (Tutor),
2. The spreadsheet component (Simulation Engine),
3. The system dynamics component (SysDyn Engine),
4. The ICA Meeting component,
5. The HTML help component,
6. The InBox component

They also disclose several workbenches:

1. ICAUtils Workbench, which houses the other workbenches,
2. ETSICA (Tutor) Workbench, which edits data used by the Tutor,
3. Regression Test workbench, which replays user acceptance tests,
4. Simulation Workbench, which simulates a user interface to test Tutor feedback,
5. Simulation Object Editor, which associates spreadsheets to Tutor data,
6. SysDyn Workbench, which simulates a user interface to test Tutor feedback,
7. SysDyn Object Editor, which associates Powersim data to Tutor data,
8. ICAMeeting Workbench, which simulates a user interface to test Tutor feedback,
9. ICAMeeting Object Editor, which associates ICAMeeting data to Tutor data,
10. Doc Maker, for saving Tutor data from a database into serialized files

11. Object Viewer, for statically viewing Tutor data.

All of the above subject matter was reduced to practice, ready for patenting, and in commercial use on the following for-fee client engagements:

1. Financial Foundations Course, General Electric Corp, 1995-1996
2. Financial Accounting for Operations, General Electric Corp, 1996
3. Business Decision Making, Pratt & Whitney, 1996-1997
4. Strategic Business Partnering Course, Lucent Technologies, 1997-1998

All of Andersen Consulting's ideas and theories about Goal Based Learning and Business Simulation had already been in commercial use on the following projects:

1. Business Practices Course, (used internally, demonstrated externally), approximately 1993-1994
2. Credit Operations and Risk Evaluation, GE Capital, 1993-1995
3. enCORE, GE Capital, 1995-1997

I would urge you to ask Andersen Consulting employees, and specifically William Stoddard, about these client engagements. I'm sure you will find that all of the subject matter in question is ineligible for patent.

In addition to the uncorrectable defects related to the statutory bar, the patents suffer from misjoinder and nonjoinder of inventorship. I was in fact the primary inventor of '443, '021, '732, and '692. I was a contributing inventor of '486, '730, '731, and 691. Several of the patents list inventors that made no contribution and omit other inventors that made contributions.

Based on comments made by William Stoddard of Andersen Consulting, I believe there are additional patents that have been applied for but not yet issued. It is very likely that they suffer from the same defects. As I understand it, you have a duty to disclose this information to the Patent and Trademark Office with respect to the issued and pending patents.

Please contact me within ten days to discuss these issues. I would be happy to answer any questions you may have. If necessary I can furnish you with names of current and former AC employees and client employees that can verify the above information.

Sincerely,

Mike Smialek

CC: Vicki St. John
CC: Kevin Rhodes
CC: Robert Beiser

KIRKLAND & ELLIS

MEMBERS AMERICAN PROFESSIONAL CORPORATION

200 East Randolph Drive
Chicago, Illinois 60601

312 861-2000

Fax/telec
312 861-0200

Kevin H. Rhodes
To Carl Winter Director
(312) 861-2373
kevin_rhodes@chicago.kirkland.com

February 25, 2000

VIA FACSIMILE & FIRST-CLASS U.S. MAIL

Robert S. Beiser, Esq.
Michael Best & Friedrich
77 West Wacker Drive
Suite 4300
Chicago, IL 60601-1635

Dear Mr. Beiser:

I write on behalf of Andersen Consulting LLP in response to Mike Smialek's letter, dated February 9, 2000, to L. Keith Stephens, Esq. I understand that you are representing Mr. Smialek in connection with the matter discussed in his February 9th letter.

We understand that our respective clients are involved in discussions aimed at resolving this matter. In addition, we are reviewing the assertions made in Mr. Smialek's letter, and we will respond to you in due course. Please direct future correspondence concerning this matter to my attention.

Very truly yours,

Kevin H. Rhodes

KHR/skp

cc: L. Keith Stephens, Esq. (via facsimile)
Vicki St. John, Esq. (via facsimile)

London

Los An

ANDERSEN CONSULTING'S
RESPONSE TO THE LETTER I SENT
ON 2/09/2000

**ANDERSEN
CONSULTING**

PERIOD
ENDING
2

SIGNATURE
Mike Smialek

EMPLOYEE NUMBER 0000814211 | 0283 | 005 | 1

CLIENT NAME AND DESCRIPTION OF WORK	WEEKLY DISTRIBUTION FOR PERIOD												PERSONNEL CLASSIFICATION	Senior Consultant			
	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30		
Enhancements. Time	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Sat	Sun		
Bus-Promo Time Busch																	
ite Promo																	
me																	
or Trng SS Java																	
Mgmt & Admin Time																	
Rel Time																	
or Trng SS Front Pg																	
ME 2 HOURS																	

Expenses Advance Reason	5	6	7	8	9	10	HRS	O.T.1	O.T.2	STATE	LOCAL	STT	STATE/LOCAL NAME	3RD PARTY	EXPENSE REIMBURSE	TAX GROSS UP
MEMO-MEALS AND ENTERTAINMENT																
EXPENSE ADVANCE REQUESTED																
COMPENSATORY REIMBURSEMENTS																

DELIVERY
2/20/97

TIME REPORT SHOWING WHEN

I DELIVERED DENO TO AC STATE
INSURANCE CO. 2/20/97

FOR 3 HRS ON AC STATE PREMISES

HOURS AND EXPENSES
HME 1 HOURS
HME 2 HOURS

ubmitting this Time Report, I confirm that
aware of and in compliance with the
es found in the Andersen Consulting Policies
base (AC Policies), including but not limited
e policies on time reporting, confidentiality
ntellectual property rights.

Expense Advance Reason

Approved by _____
Approved by _____
Approved by _____
Approved by _____

STATE/LOCAL AND SHIFT OVERRIDE INFORMATION

By

Audited By

Date

9

10

In re Patent Application

Serial No. 09/7219,478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291

Exhibit J



Time Report from Andersen Consulting, documenting activities of
Michael Smialek for the reporting period 2/16/1997 - 2/28/1997

In re Patent Application

Serial No. 09/219,478

Filed: December 22, 1998

Examiner: Michael Pender

Protest under 37 CFR 1.291



Exhibit K

Printout of a web page from Andersen Consulting's web site excerpting
their FY 1997 annual report.

[» About Us](#)[Search](#)[Go...](#)[» Message from Our CEO](#)

Inspiring Change

[» Our History](#)[» Annual Reports](#)[» 1999 Annual Report](#)[» 1998 Annual Report](#)[» 1997 Annual Report](#)[» Financial Highlights](#)[» Building on Success](#)[» The Courage to Change](#)[» Strategy](#)[» Customers](#)[» People](#)[» Structure](#)[» Processes](#)[» Future](#)[» Operations & Financial Review](#)[» Global Management Council](#)[» Countries & Locations](#)[» 1996 Annual Report](#)[» Advertising](#)

Perhaps the greatest test of an organization's courage to change lies in its ability to motivate its people to move the organization in the right direction. Courage, after all, is very personal, and each person in a changing organization must exhibit his or her own commitment to change. Sometimes, inspiring change is simply a matter of showing people the rewards made possible through the transformation. Other times, successful motivation comes from sharing the organization's vision while letting people know they have the ultimate power to achieve it. The key is to know what will inspire people to face the challenges of change.

One way of helping to bring about change is to equip people to do their jobs differently and more effectively. In Ireland, as elsewhere, the nature of crimes and criminals is continuously changing and the general public continually demands more and more of its police force. Andersen Consulting is working with An Garda Síochána -- the Irish police -- to meet these demands.

Recognizing that good information is the lifeblood of a modern policing operation, Andersen Consulting is helping An Garda introduce a change program aimed at radically improving the police force's ability to handle information. New technology is being introduced to streamline the collection and use of information by the front-line Garda, eliminating long hours of paperwork. Updated information will automatically be fed into a central database and used to help discern patterns of criminal activity. The program will put An Garda at the forefront of police forces in making the fullest use of technology in the fight against crime. As a result, Garda officers can be more effective in protecting and serving Ireland's citizens.

Simulating Experience for Success

A popular fallacy that is gradually disappearing is that human performance is not measurable. In fact, studies have shown retention rates of 75 percent for learning-by-doing approaches such as simulation, compared with 5 to 7 percent for traditional classroom training. At US-based GE Capital, Performance Technologies Director Ginny Ertl has no doubt about the effectiveness of a deal-process

No doubt about the effectiveness of a lean-process
simulation developed in partnership with Andersen Consulting. Credit Operations and Risk Education (CORE) replaces 120 hours of centralized classroom training with 30 hours of computer-based simulation deployed to the desktop. "On average, professionals have demonstrated a 65 percent improvement in capabilities after CORE training," says Ertl. "We're thrilled with the results."

Ertl has noticed another benefit: besides allowing professionals a better grasp of detail, CORE shows the bigger picture -- the cross-functional nature of work. As she put it, "People get better at their jobs when they know how their pieces fit into the larger process."

Pratt & Whitney, a recognized leader in the aerospace industry, faced a similar opportunity to improve its performance. The foundation of Pratt's strategy is to strive for continuous business process improvement as well as continuously seek ways to increase value to its customers. To support these strategic goals, Pratt & Whitney undertook an effort to improve the understanding of the company's management of the effect their day-to-day decisions have on customers and on Pratt's financial performance.

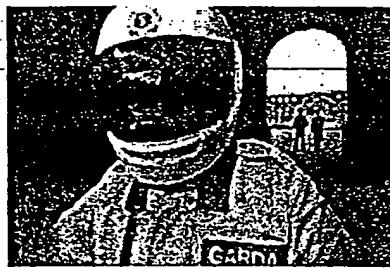
This presented an opportunity to use Andersen Consulting's unique business simulation approach, which combines goal-based learning with multimedia technology to allow people to simulate business situations. Individuals can make decisions in risk-free, controlled environments, and learn from the results of these decisions. This innovative approach enabled Pratt & Whitney's executives to gain a true appreciation for how their day-to-day decisions would affect the short-term and long-term performance of their engine program, the company and, ultimately, shareholder value.

This interactive, computer-based program enables individuals to retain more essential business information resulting in improved employee performance. Pratt & Whitney confidently expects to see improvements in financial results and greater customer satisfaction. These are just some of the rewards available to organizations that are willing to challenge employees to rethink the way they work.

Inspirational Performance

Inspiring people to perform at top levels was a challenge faced by Kanto Gakuen in Japan, a private institution that includes a university, a two-year college, a high school and the administration necessary to run the various components. The institution was interested in overall reform, from the recruiting process to the educational curriculum and student services at all levels. One of the first achievements of the project was changing the way Kanto Gakuen's people worked and communicated. Andersen Consulting helped the university combat some of the conservative attitudes and passive approaches often found in Japanese institutions by opening up the channels of communication. An extensive E-mail and information system connects people in all departments and makes it easier to exchange information and find better ways to work. As a result, inefficient, paper-based processes have

been eliminated and productivity has increased as people have the information they need to do their jobs.



Ireland's national police force is working with Andersen Consulting to find ways to eliminate paperwork and help the country's officers focus on protecting and serving people in areas such as Dublin castle. Recognizing that solving and preventing crime is largely a matter of having reliable information, the two organizations are exploring options for collecting and using that information for the benefit of Ireland's law-abiding citizens.

Keeping People Focused

Texas Instruments, one of the world's foremost high-technology companies, has a vision of becoming a global enterprise that connects people around the world to each other and to information in unprecedented ways. At the same time, the company recognizes the need for better ways to connect its own people and the work they do. Andersen Consulting was tapped to design, build, implement and operate the processes and accompanying systems to run many of Texas Instruments' core operations, including manufacturing, supply-chain management, workflow and distribution. Andersen Consulting will also create new ways to plan production, manage product development, communicate with customers and manage quality. "With this partnership, we are maximizing the strengths of two outstanding organizations while providing tremendous growth opportunities for employees through education, training and career development," said Phil Coup, vice president of Texas Instruments' semiconductor group.

A project of this scale is sometimes best done in small steps so as not to disrupt the people around it, so Andersen Consulting and Texas Instruments are working together to prepare the organization for a series of "step changes." While Andersen Consulting is helping to move Texas Instruments to a new internal structure, the people of Texas Instruments can focus on moving the world toward new ways of communicating.

Commitment to Change

Determining people's commitment to a transformation program is a difficult task at best. While anyone can go along with an organization while it is in the midst of change, the truly courageous will be set apart by their ability to drive the change forward. Eventually, their commitment will be evident in their performance.

At Progressive Enterprises -- a major New Zealand supermarket and wholesale chain and the country's second largest employer --

Wholesale Client and the Country's Second Largest Employer --
Andersen Consulting is partnering with the client to help it cope with a flat market. By helping Progressive's workforce find new ways of working, which include adapting new practices and systems, the project team is helping Progressive restore its profitability and improve shareholder returns.

Some organizations are inspired to adopt a social commitment to meet the needs of a changing society. Perhaps nowhere is this more evident than in South Africa. Eskom, the principal supplier of electricity for Africa and the fifth largest supplier in the world, has the vision "to provide the world's lowest cost electricity for growth and prosperity." In achieving this vision, Eskom will enhance quality of life in South Africa's poorest communities, where 15 million people have no access to electricity, and will also support the global competitiveness of South Africa's economy. The utility's vision is ambitious and Eskom executives realize that effective financial and materials management are critical to support this commitment. New software and modern technology are being installed, but Eskom and Andersen Consulting are paying close attention to the human performance required of the users involved in the change.

The project team is assisting the people involved at all levels, from seeking executive sponsorship to developing training for those who will work with new processes and systems. By taking a holistic approach to massive business change, Eskom and Andersen Consulting are enabling effective management with best practices, technology, knowledge and skills -- and enabling 8,000 people to realize Eskom's vision for a changing South Africa.

Pushing the Boundaries

Sometimes industries change the way people work, and other times people have the opportunity to change an industry. In communications, the changes have been coming from both directions. As technology makes possible new business capabilities and as communications companies deal with deregulation and exploding new markets, the industry is in flux and is challenging many companies to keep up.

NTT, Japan's domestic mega-carrier and a top carrier in the world, plays a critical role in Japan's national industrial strategy, which is undergoing a wave of globalization. Andersen Consulting is helping the conservative carrier develop a major behavioral change initiative among its top leadership to prepare the company for the globalization the market demands. NTT is benefiting from a new human resource strategy and is better positioned to be a strong player in a competitive, global market.

From teaching-by-doing to merging diverse cultures, far-reaching change inevitably comes down to people. Perhaps

that is why organizations that focus exclusively on their product, their technology or the competitive landscape are bound to stumble. For while it is important to watch the horizon, you must also be attuned to what is happening around you and begin any change program where its success ultimately lies...with the people who will make it happen.

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In re Patent Application

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Protest under 37 CFR 1.291

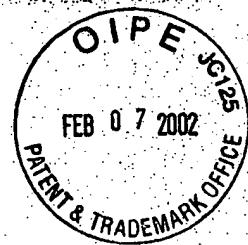


Exhibit L

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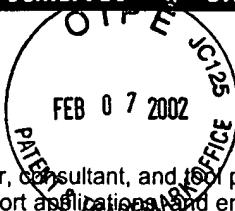
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Exhibit 1

Printout of the web page at
<http://www.knowledgedynamics.com/about.html>
on July 17, 2001



ABOUT US...

Knowledge Dynamics is a leading-edge developer, consultant, and ISV provider for advanced training simulations, integrated performance support applications and entertainment applications. Our suite of tools is based on open standards for Web-based and stand-alone delivery.

We offer the suite to development partners for the above uses and for adding intelligent interactions to customer-facing web sites. Knowledge Dynamics was founded on the principles of employee ownership, lifelong learning, and the drive for fast, innovative software development.

OUR MISSION

To be the leading provider of intelligent enabling technology for enhancing the interactivity of learning and performance support solutions.

OUR VISION

A world where Knowledge Dynamics software products help all learners achieve their full potential and all workers perform at their peak every day.

MANAGEMENT TEAM

CEO Michael R. Smialek

Before founding Knowledge Dynamics, Mike was a manager at Andersen Consulting with six years of experience in the Emerging Technologies Solutions group. Mike helped pioneer the use of Artificial Intelligence in addressing client problems in the Financial Services, Insurance, and Manufacturing industry segments. Mike led many of Andersen Consulting's Artificial Intelligence initiatives and redefined the way they deliver Business Simulation engagements.

CTO Michael H. Rubin

Also a graduate of Andersen Consulting, Mike was a consultant in Technology Research and Development and then later in AC's Business Simulation Line Of Business. Mike worked on a variety of client engagements, helping define enterprise architectures for customer-centric information systems. More recently Mike led an initiative to deliver Java-based Business Simulation training solutions to AC clients.

CFO/COO Jon Conant

Jon recently joined Knowledge Dynamics after more than 5 years of e-Learning experience with Andersen Consulting's (AC) eHuman Performance Service Line. During this time, Jon worked closely with executives in some of today's most successful companies and excelled in technical, functional, and project management roles. Jon recently led strategic asset development efforts for AC. Jon helps define and execute Knowledge Dynamics' overall strategy while focusing primarily on Operations and Finances. Jon graduated Magna Cum Laude from Providence College with a B.S. in Finance and he is a Level 3 CFA Candidate.